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(1)

Supreme Court, U.S.
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10-172

No. _____

In The
SUPREME COURT OF THE UNITED STATES

A.F., A MINOR, et al.,
Defendants-Appellees-Petitioners-Petitioners,
v.

STATE OF TEXAS,
Plaintiff-Appellant-Respondent-Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS,
TO THE
COUNTY COURT AT LAW NO. 3
OF COLLIN COUNTY, TEXAS,
AND TO THE
MUNICIPAL COURT,
CITY OF PLANO, TEXAS

ORIGINAL PETITION FOR A WRIT OF CERTIORARI WITH APPENDIX A

A.F., A MINOR
RICHARD JOHN FLORANCE, JR.
1908 VASSAR DRIVE
RICHARDSON, TEXAS, 75081

Questions Presented

Municipal court – "no Record"

1. Does Due Process tolerate a court of no Record?

2. Is trial *de novo* an adequate remedy?

3. Does Art. 45.018(b) violate Due Process?

4. Where there's no jurisdiction over the original matter, is there jurisdiction to charge non-appearance?

5. Where a judge orders a clerk to file a "failure to appear" charge, is the judge the complainant?

6. Where the judge is the complainant, is he ***disqualified***?

7. Is the judge's *ex parte* "ruling" reviewable via trial *de novo*, appeal, or discretionary review?

8. Does Art. 45.0215 violate Due Process?

9. Is a Summoned parent a party?

10. Did the judge deny RJF's access by prohibiting RJF's participation as a party?

11. Is a Summoned parent an indispensable party?

12. May the court exclude an indispensable party *and* maintain jurisdiction?

13. Does ALCO. BEV. CODE § 106.04 define an offense?

14. If so, does a charge under ALCO. BEV. CODE § 106.04 require proof of a mens rea?

15. Is the complaint defective where it alleges no mens rea?

16. The instructions included nothing about mens rea. Are they inadequate?

17. The instructions included nothing about Removal. Are they inadequate?

County court

18. Did BARRY have jurisdiction to proceed during Removal?

19. Is RJF still a Summoned parent?

20. Does Art. 45.0215 violate Due Process?

21. Is a Summoned parent a party?

22. Did BARRY deny RJF's access by prohibiting RJF's participation as a party?

23. Is a Summoned parent an indispensable party?

24. May BARRY exclude an indispensable party *and* maintain jurisdiction?

25. When the cops ordered A.F. back into the townhouse, was she detained or arrested?

26. There being no exigent circumstances, didn't the cops need a warrant to search inside the townhouse?

27. If a warrant was necessary, where's the consent to waive that requirement, and how was it communicated?

28. When the cops ordered A.F. to sit on the couch, was she detained or arrested?

29. Do these facts and circumstances demonstrate selective enforcement?

30. Is a "group blow" breathalyzer test competent evidence?

31. In a non-transportation matter, is a breathalyzer test admissible where there's no *Miranda* warning given?

32. Is this breathalyzer test admissible where there was no search warrant?

33. Since this entire non-transportation matter involves a minor, where's the effective consent to a warrantless search?

34. Does ALCO. BEV. CODE § 106.04 define an offense?

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37. Regarding the prosecutors, how much baseless prejudicing is too much?

38. Does a trial court acquire jurisdiction by entering a Not Guilty verdict?

39. Did STATE ever satisfy its burden of proof?

40. The instructions included nothing about mens rea. Are they inadequate?

41. Does Art. 4.03 violate Due Process?

State appellate court

42. Does TEX. R. APP. P. 25.2(d) violate Due Process?

43. Does GOV'T CODE § 22.220 apply?

Parties to the Appeal(s)

Petitioners

AMANDA JEAN FLORANCE ("A.F.")
A minor for all purposes for this matter
Defendant – Appellant

RICHARD JOHN FLORANCE, JR. ("RJF")
The Summoned parent
Party (Defendant) – Appellant

Respondent

STATE OF TEXAS ("STATE")
Plaintiff - Appellee

JOHN R. ROACH, District Attorney, Collin County

JOHN R. ROLATER, JR., Asst. DA, Chief, Appellate Division

Notified regarding statutory challenges

Hon. GREG ABBOTT
STATE's Attorney General

UNITED STATES OF AMERICA/UNITED STATES
U.S. Attorney General MUKASEY (now HOLDER)
U.S. Attorney, E.D. Tex. ORWIG (then RATCLIFFE, now BALES)
U.S. Attorney, N.D. Tex. ROPER (now JACKS)

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Petition for a Writ of Certiorari

A.F. and RJF petition for a writ of certiorari to the identified state courts as follows:

Citations to decisions below

None.

Jurisdiction

(i) County Court (BARRY) on trial *de novo*
2006 June 27 – Jury Verdicts (Not Guilty – Failure to Appear; Guilty – Underage Consumption of Alcohol); Sentence (fine $75). Notice of Appeal filed 2006 July 5.

A.F. and RJF had Removed the case to E.D. Tex. Remand occurred 2007 February 20 without Notice to A.F. or RJF. County Court allowed appeal to remain dormant for at least 16 months.

State appellate court
2009 May 8 – Affirmed as modified (Florence to Florance)

Supreme Court of Texas – dism'd w.o.j.
2010 February 12, No. 09-0482.

Court of Criminal Appeals – "refused"
2010 May 5, No. PD-0424-10. (This petition.)
[+90: 2010 August 3]

(ii) Extension Re: 2006 June 27 [+90]. For *Powell*, Petitioners rely on timely activation of the state appellate process as the applicable extension.

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. §§ 1257(a) (final), 2101(c).

(v) Regarding Rule 29.4(c)
STATE is a party. All activity in STATE's courts. USOA/U.S. also notified.

No Oral Argument Requested

Oral argument is not expected to aid in the resolution of this matter.

Statement of the Case

When Federal Questions Were Raised

Before the case even started.

COURTS OF NO RECORD.

Texas has two types of municipal courts: no Record and of Record. Does Due Process tolerate a court of no Record?

In the municipal court – Plano, Texas.

MOTION TO DISMISS.

Appearing specially, and *in pro per*, for the first setting on 2005 March 1, A.F., age 16 when charged, moved to dismiss. Art. 45.018(b) is very clear. STATE must give Notice at least one day prior to "any proceeding" relevant to the prosecution. Is Notice of only one day meaningful? NORS didn't file her "complaint" until March 31, i.e., ***30 days after*** that initial proceeding. Obviously, motion denied, and this one got nothing but worse from here.

ADDITIONAL PRE-TRIAL MOTIONS.

To review history, A.F. moved, via special appearance and *in pro per*, to suppress the "group blow" breathalyzer test (denied); moved to strike the tardy Complaint (denied); moved to dismiss (NORS does not have signature authority to represent STATE; hence, still no pleading filed) (denied); moved for sanctions (NORS purported to have signature authority she didn't have) (denied); requested production of documents (granted/denied, in part); and moved a second time to strike (denied).

MANDAMUS AND DECLARATORY JUDGMENT CASE.

Because the municipal court refused to recognize its own procedural rules and jurisdictional limits, A.F. and RJF initiated, *in pro per*, the now infamous proceeding in the *county* court, in which the county clerk's office tampered criminally with the Record, refusing ***twice*** to file the motion for new trial. [1]

NOTICE OF REMOVAL.

When the county court delayed and delayed in addressing the mandamus and declaratory judgment case, A.F. and RJF Removed from municipal court to E.D. Tex. A case involving a minor, based on a non-Penal-Code provision, is civil. [2] Where's the capacity to agree to be regulated? Where's the signed writing? *See* challenge to § 106.04.

SECOND CHARGE – NON-APPEARANCE.

The July 5 Removal affected the July 6 municipal court setting, set by Notice, not by order. Neither A.F. nor RJF appeared. On July 19, the municipal

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[1] The second time, the deputy clerk said the motion wasn't even in the envelope. Yet, that very next day, it arrived back at the house in a Collin County Clerk's Office envelope.

[2] The first case is based on ALCO. BEV. CODE § 106.04.

court judge instructed the clerk to charge A.F. criminally for failure to appear.

Is the judge the actual complainant? If so, is a "complaining" judge ***disqualified*** from that case?

EX PARTE MOTIONS AND RULINGS.

The city prosecutor and municipal court judge exchanged emails during the Removal. Neither A.F. nor RJF was included in those communications. In effect, the prosecutor requested cessation during the Removal, and the judge agreed. The "ruling" is of Record in the *county* court, but not in the *municipal* court. Is that ruling reviewable via any of trial *de novo*, appeal, or discretionary review?

MUNICIPAL COURT TRIAL.

The court issued a Summons "To The Parents Of" A.F. Who gets Summoned? Witnesses, prospective jurors, and parties. A parent is not Summoned as a witness or juror; that leaves party.

RJF responded to the summons. At trial, the judge ordered RJF to leave the courtroom as if he were (merely) a witness. RJF was not allowed to participate as a party.

Is RJF, the Summoned parent, a party? Did the judge deny RJF's access by completely prohibiting his participation as a party?

Is a Summoned parent an indispensable party? May the court exclude an indispensable party *and* maintain jurisdiction?

The jury instructions were completely silent about mens rea. A.F., a teetotaler, didn't drink. Everyone knew that. She poured herself a Coke from the plastic bottle. She added nothing; no one else added anything. She sipped it a couple of times, put

it down, and never touched it again because it tasted funny. Where's the crime?! What *legitimate* policy can the charge *possibly* support?

Does ALCO. BEV. CODE § 106.04 define a crime, at all? If so, is there a mens rea element?

The complaint alleges no mens rea. Is it defective?

Where the instructions include no mens rea element, are they invalid? Where the instructions mention nothing about Removal, are they invalid?

Guilty – Non-appearance: $500.

Guilty – Underage consumption: $250. ($305?)

Appeal via trial *de novo*. Is that adequate?

In the county court – McKinney, Texas.

NOTICE OF REMOVAL.

A.F. still appearing specially and still *in pro per*, moved to dismiss. Denied (by BARRY). A.F. and RJF Removed to E.D. Tex.

During Removal, BARRY proceeded, denying A.F.'s *in pro per* motions to suppress, to strike, and to compel discovery. [3] Did BARRY have jurisdiction to proceed during Removal?

TRIAL *DE NOVO*.

Nothing about trial *de novo* negates a Summons. Is RJF still a Summoned parent in the county court?

At trial, BARRY allowed RJF to sit at the defense table, but BARRY prohibited RJF, the summoned parent, from participating as a party.

Is RJF, the Summoned parent, a party? Did BARRY deny RJF's access by prohibiting his participation as a party?

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[3] We still don't know what the Draeger unit's programming does in the "group blow" circumstance.

Is a Summoned parent an indispensable party? May the court exclude an indispensable party *and* maintain jurisdiction?

A.F. and MELLOR, a defense witness, were outside the townhouse and leaving when the cops were walking up the front walk. The cops ordered them back inside the townhouse. Is that a detention or an arrest?

The detention/arrest, custodial interrogation, "group" breathalyzer test, and ticketing all occurred inside the townhouse. Is it even possible to commit "underage consumption" in a private residence? [4]

The cops said they got a tip about a party involving "underage drinking" from someone driving by in a car. They had time to get a warrant and just didn't. They didn't rush to the scene with sirens blaring; they took their time. They didn't rush into the townhouse; they walked up to the door. It's difficult to say there were any exigent circumstances, especially in light of the number of people allowed to leave without any testing of any kind. Thus, wasn't a search warrant necessary? [5]

Without warrant, the cops invited themselves inside the townhouse. Was consent necessary? If so, was there effective consent to any search for any purpose? If so, by whom, and how was it communicated?

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[4] If so, then cops may peek through all windows of all residences, or even invite themselves in, at any time, under the disguise of suspicion of underage consumption.

[5] If no warrant is needed, then cops may walk in on any party at any time, anywhere, public or private, under the disguise of looking for underage consumption.

Once inside, they did find one girl who was really sick, for whom one of the cops called an ambulance. She was the ***one*** person in the entire group who had very clearly and obviously consumed alcohol; ***so, of course, she was never ticketed!*** Along this same line, the cops let a significant number of people leave the townhouse before the group breathalyzer was given. Among the myriad of ***bold-faced lies*** told under oath by the Plano cops, [6] they say they saw

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[6] This started *very* early in the process. **NORS's story – Version 1**. In the suppression hearing in the municipal court, GLENN testified that NORS told him that A.F. told NORS that A.F. had consumed half a beer. A.F. never so much as ***touched*** a beer, at any time, for any reason, much less drank any.

NORS' story – Version 2. At trial in the municipal court, NORS' testified that A.F. had told NORS that A.F. had consumed a "mixed drink". A.F. never told NORS any such thing at any time, period. NORS was taking very much out of context A.F.'s analogy of what had happened as found in her Affidavit supporting the mandamus and declaratory judgment action in the ***county*** court. Thus, NORS got that information via the prosecutor, i.e., perjury ***and*** subornation of perjury.

NORS' story – Version 3. By the time the cops had rehearsed their fabricated stories and reworked the physiology and the math for this extravagant trial *de novo*, a two-day event involving a Record of some 1,300 pages for an alleged Class C matter, involving testimony from three, count them, three cops, the dead-bang certainty of "half a beer" followed by the dead bang certainty of a "mixed drink", had became "one, one and a half, two beers, or whatever alcohol she was drinking." 3 Tr. 40 (line 11) to 43 (line 2) (**NORS**). A.F.'s alleged "confession" to **NORS**, which never existed in the first place, had vanished.

NORS also testified that upon NORS' request to do so, A.F. had assisted the drunk girl (who was never ticketed), who had been taken into the downstairs bathroom. The reality is that the cops had ordered A.F. to sit on the couch very early on, from which spot A.F. ***never moved*** until released after being ticketed. Why would NORS lie about A.F. and the drunk girl? NORS' guilt, maybe, over the illegal entrance, search, ticketing,

numerous "kids" "streaming out of the apartment" where there was a party for drinking and that their reason for being there at all was alleged underage drinking. Yet, after they let all those "kids" run away, they let many more leave without breathalyzer testing and without citation who were purportedly 21 and ***not*** drinking at the underage drinking party. [7] Thus, keeping in mind that this is a townhouse out of which an unknown number had just "streamed" and from which many *more* had been allowed to leave, because they were 21 and ***not*** drinking, there were *still* 20-25 inside. Of that number, six were ticketed, the drunk-as-a-skunk girl *not* being one of the six. How selective does selective enforcement need to be to qualify as selective enforcement?

Each cop had one breathalyzer unit. PHAHNING did zero testing. GLENN tested two (on the same machine). That leaves NORS with one unit testing 20+ people, seriatim. Different mouthpieces, allegedly, but no disclosure of internal operations or resetting of the machine or confirmation of independent test results of any test. Is a "group blow" breathalyzer test competent evidence? A.F. was not the first one tested. Is a "group blow" competent for the second and subsequent tests?

Miranda warnings were never given. Did that failure violate Due Process?

A.F.'s "consent" to the "group blow" test was obtained via the cops' threats of taking her downtown if she didn't "consent". Did A.F. consent?

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testimony, etc.? The next lie always fixes the prior ones, right?! If they had a legit case, why all the lies?

[7] No known cases under ALCO. BEV. CODE §§ 2.02 or 106.06.

The prosecutor couldn't tell the panel often enough during *voir dire* the prosecutor's perspective that RJF was a member of "Republic of Texas", whatever that is. The prosecutor also threatened RJF with a charge of unauthorized practice while RJF was on the stand. How much baseless prejudicing is too much? [8]

A.F. and RJF submitted proposed jury instructions. None was included. Key, BARRY's instructions included no mens rea element. Is underage consumption a "no mens rea required" offense? *Cf.* ALCO. BEV. CODE § 106.05. How is the policy satisfied where the minor doesn't "know" about the alcohol content? BARRY's instructions were also silent regarding Removal. The panel's first question had to do with Removal. Were the instructions valid?

Not Guilty – Non-appearance.
Did BARRY have jurisdiction to reach the merits?

Guilty – Underage consumption: $75.

STATE's "tyranny allowed zone" purports to limit appeals to "statutory challenges only" where the fine is $100 or less. Trial courts may mask "all" errors by fining the illegally convicted not more than $100. Does Due Process tolerate a "tyranny allowed zone"?

Structurally, STATE puts ultimate control of an appeal in the hands of the trial judge to be reviewed. "No federal right to an appeal" competes with Art. 44.07 (statutory right to appeal), which competes with Art. 4.03, the "tyranny allowed zone" (up to $100). Does Art. 4.03 violate Due Process?

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[8] Did the baseless prejudicing backfire? RJF testified about Removal. "Failure to Appear" – Not Guilty.

REMAND FROM E.D. TEX.

The trial occurred 2006 Jun 26-27. The Remand is dated 2007 Feb 20. Is either charge civil?

E.D. Tex. never served its Remand order on A.F. or RJF. Not only was the state appeal delayed 16 months, but also review in this Court at that time was effectively prevented altogether.

ON APPEAL.

TEX. R. APP. P. 25.2(d) burdens the *defendant* with producing the *judicial* certificate. No defendant has control over what any judge does or doesn't do. To punish the *defendant* for a *court's* failure is outrageous. Moreover, even a "bright line" procedural rule doesn't and can't affect statutory jurisdiction.

If appeal is to be limited, and if the *defendant* has the burden to establish increasingly limited appellate jurisdiction, then let the jurisdictional factors be both statutory and something over which the *defendant* has direct control. If *pleadings* control appellate jurisdiction, let the defendant verify what was and wasn't *pled*. For an appellate court ***with*** jurisdiction to refuse to exercise it where the fault is procedural and not within the defendant's control is, at best, denial of access.

Also, this particular appellate court keeps demanding 25.2(d) certification for civil cases.

The appellate court *twice* changed the characterization of this case to "civil".

Initially, the appellate court also did everything possible to prevent RJF's participation. RJF's Affidavit (of "ownership") seemed cure the problem.

Argument

Sequence

The Questions are roughly chronological and are associated with the forum of their origin. Petitioners raised nine Points in the limited state appeal. All Questions are (also) asserted via *Powell*.

Municipal court – "no Record"

1. **Does Due Process tolerate a court of no Record?**

No such thing, actually.

On the one hand, there is no such thing as a court of "no Record". The judgment has to be in writing. On the other, there being no verbatim Transcript of hearings or trial, appellate review of the whole case is impossible. Thus, it's a court of "no accountability".

Agency analogy.

The analogy to "agency" activity comes to mind, along with exhaustion of administrative remedies. But, even reviewable agency activity has a Record.

Deceptive labeling.

If it's called a court, and looks like a court, and acts like a court, e.g., having judges who must be "licensed", etc., it should ***be*** a court. Having no reviewable Record due to a party's refusal to participate, *Chandler*, is quite distinct from STATE's compelling the use of a forum of "no accountability". Traditionally, if no Record, then no appellate jurisdiction. *Ferreira*. Thus, we're talking about a STATE-sponsored policy of systemic denial of access to an appellate court for *any* type of review.

2. Is trial *de novo* an adequate remedy?

Conscience-shocking, tyrannical lawlessness.

The Record and the Brief on direct appeal detail the municipal court's conscience-shocking, blatant, tyrannical lawlessness. The cops lied from Day One, obviously suborned by the prosecutor(s), and the judges' conscious, deliberate procedural defiance screams from the page. STATE's silence on appeal confirms the facts. Many of the next 15 Questions are raised not so much with an expectation they may be reached, but to emphasize the extortion utilized systemically by STATE via the "no Record" forums.

Trial *de novo* happens where there's fundamental error at trial. The "offending" judge is corrected. To use trial *de novo* as "the" remedy is to confess the systemic, structural, built-in, fundamental error, but the "offending" judge is never corrected.

Petitioners expect the lawlessness would drop dramatically if direct review were possible.

3. Does Art. 45.018(b) violate Due Process?

One day's Notice.

Since certain objections have to be filed to be preserved, how is one day's Notice meaningful? *Armstrong*, 380 U.S. at 552.

4. Where there's no jurisdiction over the original matter, is there jurisdiction to charge non-appearance?

Civil v. criminal.

A court always has jurisdiction to determine its jurisdiction. *Marbury v. Madison*. Sometimes, jurisdiction can't be determined without trial. In

such case, appearance might be compelled.

But here, jurisdiction is ***facially*** non-existent. Questions 13, 14, and 15 are incorporated. There's no statute. But, if it's valid, it requires a mens rea that is facially absent in the "complaint". No hearing, much less trial, is necessary to see that. In this case, there's no jurisdiction to compel participation.

All non-Penal-Code matters are civil, and even some Penal Code matters are civil, in that they require a commercial nexus. The municipal court is a "criminal case only" forum. GOV'T CODE § 29.003. NORS' complaint is not only late but also facially defective. STATE has no statute, no mens rea, and no commercial nexus; hence, no case, i.e., no standing. STATE's Supreme Court considers the matter "criminal", No. PD-0424, but that characterization changed *twice* on direct appeal, and Petitioners still don't agree that this is "criminal".

No order to appear.

If this *is* a "criminal" case, where's the order compelling the appearance on 2005 July 6?

5. Where a judge orders a clerk to file a "failure to appear" charge, is the judge the complainant?

Agency.

The clerk wasn't acting on her own. She acted under the judge's instructions. She's the agent; he's the principal.

6. Where the judge is the complainant, is he *disqualified*?

Judge as witness.

No question exists that a judge may/can be a

witness and/or a complainant. But, he can't preside over that same case. *Bradley*, 990 S.W.2d at 248, 249 (citing TEX. R. CIV. EVID. 605; *Brown*, 843 F.2d at 851); *In Re Murchison*; TEX. R. CIV. P. 18a, 18b, 18b(1)(b); *Tesco American, Inc.*, 221 S.W.3d at 551-52 n.1, 553 n.10, 555 n.27; *McKenna*.

7. Is the judge's *ex parte* "ruling" reviewable via trial *de novo*, appeal, or discretionary review?

Judicial v. ethical review.

Is the *ex parte* email "ruling" "merely" unethical, or is it also reviewable judicially? If it's not judicially reviewable, as is the case with most municipal court errors, it's one more point illustrating the rampant lawlessness unreachable by direct review.

8. Does Art. 45.0215 violate Due Process?

STATE "amends" A.F.'s age at each phase.

A.F. was 16 when charged in Jan. 2005. The DA, trial court, *and* appellate court "amend" A.F.'s age for each phase of trial and appeal. Once 16; always 16. Otherwise, STATE already has no "actual grievance" under § 106.04.

Systemic exclusion of the Summoned parent.

As a parent, RJF responded to the Summons. The municipal court completely prohibited his participation as a party. On trial *de novo*, BARRY allowed RJF to sit at the defense table, but still completely prohibited his participation as a party. Even the state appellate court initially bent over backwards, double, fourteen ways from Sunday, to prohibit RJF's participation in the appeal.

Language.

If "minor" ***always*** meant "younger than 17", fine. But, "minor" changes. If the defendant is a "minor" for purposes of the charge, then the "parent" is an indispensable party for all purposes throughout.

Application.

Cf. Yick Wo. Who is Summoned? **(1)** Witnesses, Art. 2.16, Art. 20.10 (grand jury witnesses), 20.14 (same), Art. 24.28 §§ 2, 3, 4, 5, Art. 56.82; **(2)** Jurors, Art. 19.01 (grand jurors), Art. 33.09 (trial jury); and **(3)** Parties, Art. 15.03 (party, as in defendant), Art. 17A.03 (defendant corporation), Art. 17A.04 (service on corporation), Art. 17A.05 (service on association), Art. 23.03, Art. 23.04, Art. 29.01 (defendant association or corporation), Art. 103.0031.

Into which category do "parents" fit? Art. 45.0215 ("parents"), Art. 45.054 ("parents"), Art. 45.057 ("parents"). They're not witnesses or jurors. That leaves party. *Cf. KMP*. Where the minor is the parent's "property", claims against kids are (*quasi*) *in rem*, making the "owner" an indispensable party.

Exclusion terminates jurisdiction.

Where the court properly Summons the parent, but then turns right around and prohibits the parent from participating as a party, the court proceeds without an indispensable party. *Cf. Provident Bank* (Rule 19, indispensable parties); *Nevada*, 463 U.S. at 118 n.6 (amendment included indispensable parties).

9. Is a Summoned parent a party?

Question 8 is incorporated. The Summoned parent is neither a witness nor a juror.

10. Did the judge deny RJF's access by prohibiting RJF's participation as a party?

Questions 8 and 9 are incorporated. To Summon a parent and then prevent his participation as a party is to deny access. *Cf. Harbury*.

11. Is a Summoned parent an indispensable party?

Question 8 is incorporated. The parent is an "owner"; hence, an indispensable party.

12. May the court exclude an indispensable party *and* maintain jurisdiction?

Questions 8 and 11 are incorporated. *Cf. Provident Bank* (Rule 19, indispensable parties); *Nevada*, 463 U.S. at 118 n.6 (amendment to include indispensable parties).

13. Does ALCO. BEV. CODE § 106.04 define an offense?

There's a problem, but this isn't the solution.

Petitioners recognize the alcohol-related tragedies in colleges and high schools, especially those arising from Greek organizations' rush activities and significant high school events. But, *this* statute ***solves*** nothing.

No capacity.

The statute self-destructs. For § 106.04, a person is a minor if younger than 21. CIV. PRAC. & REM. CODE § 129.003; ALCO. BEV. CODE § 106.01. How

does an unemancipated 16-year-old have the capacity to agree to be regulated? FAM. CODE § 31.006 (only *emancipated* minors have capacity to contract); Op. Tex. Att'y Gen. No. DM-93-61.

Mens rea element eliminated judicially.

The *statute* requires a mens rea (of at least negligence). The *courts* have required none. Nothing shy of "knowingly" is fair, here. *Posters 'N' Things, Ltd.* (scienter element required); *Dennis*, 341 U.S. at 500 (mens rea is the rule not the exception). [9]

Cf. Carter; *X-Citement Video*; *Staples*; *Evans*; *Osborne*; *Liparota*; *Bailey*; *United States Gypsum Co.*; *Morissette*. *See also Village of Hoffman Estates*, 455 U.S. at 499; *Grayned*, 408 U.S. at 111, 114; *Colautti*; *Screws*, 325 U.S. at 101-02.

Mens rea is a required element, PENAL CODE § 1.07(a)(22)(B), unless the statute plainly dispenses with it. PENAL CODE § 6.02(b). Where the statute neither dispenses with it nor supplies one, § 6.02(c) supplies it. Specifically for alcohol-related offenses, there is always at least the mens rea of criminal negligence. ALCO. BEV. CODE § 1.08. Since § 106.04 *clearly* doesn't plainly dispense with mens rea, § 106.04 has a mens rea element. [10]

PENAL CODE § 6.02(f) doesn't apply for this case.

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[9] "Traffic violations generally fall into that category of offenses that dispense with a mens rea requirement. [*Dotterweich*.] These laws embody the social judgment that it is fair to punish one who ***intentionally*** engages in conduct that creates a risk to others, even though no risk is intended or the actor, through no fault of his own, is completely unaware of the existence of any risk." *Feola*, 420 U.S. at 690-91 (emphasis added). Thus, the mens rea element is "intentionally".

[10] Conspicuously absent in the "complaint" is any *remote* mention of mens rea.

The events occurred prior to 2005 September 1. Also, § 106.04 is a state statute, not a city ordinance or commissioner's court order.

Given that this case deals with clandestine Coke-spiking, mens rea has to be at least "knowingly". Otherwise, victims of Coke-spiking become criminals, as STATE has clearly intended here. Judicial elimination of the mens rea renders the statute void.

No "public" context element.

Without a "public" context element, this statute justifies privacy invasion of a most vile sort. STATE may be a/the "parent" in the "public" context, but not ***in the private context***. *Whisenhunt*, 464 U.S. at 971; *M. L. B.*, 519 U.S. at 116. *See also Santosky*, 455 U.S. at 753 (child raising); *Boddie*, 401 U. S., at 376 *Boddie* (family life, child raising); *Stanley*, 394 U.S. at 564 (fundamental right to privacy); *Pierce*, 268 U.S. at 535 (child rearing and education); *Meyer*, 262 U.S. at 399 (same).

Even more outrageously, the Iraq War veteran, 20, in Murfreesboro, Tennessee, was arrested 22 Feb 2009 for underage consumption after the cops went to the wrong apartment complex at 3:30 a.m. He was drinking beer with his Dad in the apartment.

Residential privacy protects, e.g., homosexuality, *Lawrence*, and self-defense, *Heller*, *McDonald*. It also protects against unlawful searches, generally, *Groh*. Thus, residential privacy also protects alcohol consumption. *Cf. Minnesota v. Carter* (drug case; residential privacy not extended to *business* invitee).

Without a "public" context element, nothing stops privacy invasions conducted under "suspicion of underage consumption". Without a "public" context element, § 106.04 is too vague, which overbreadth

encourages enforcement ***well*** beyond STATE's authority. *Cf. Kolender*, 461 U.S. at 357-58. *See also Whisenhunt*, 464 U.S. at 969-71.

STATE has an interest in the health and welfare of its human property / "charges" / "wards" brought into this world via the commercial reproductive acts of "licensed" parents. *Cf. Griswold.* And, privacy obviously isn't, and can't be, a barrier to STATE's regulation of behavior involving physical injury or taking of property or of commercial activity for which an enforceable commercial nexus exists. *However*, there is a "fundamental ... right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy." *Whisenhunt*, 464 U.S. at 971.

Insufficient enforcement limits, i.e., no "public" element, renders the statute void.

14. If so, does a charge under ALCO. BEV. CODE § 106.04 require proof of a mens rea?

Question 13 is incorporated. If the statute passes muster, it has a mens rea element: negligence.

If this were a "traffic" case, STATE would *not* have a "no mens rea" case, but rather an "intentional" mens rea case. *See* n.9.

15. Is the complaint defective where it alleges no mens rea?

Questions 13 and 14 are incorporated. Since § 106.04 requires a mens rea, the complaint is facially defective; neither trial court had jurisdiction.

Ordinarily, a defendant may raise this for the

first time on appeal. *Bird* (distinguishes "complaint" from "indictment" and "information"); *Henderson*. This Court is not limited by Art. 4.03, *see* Question 41, and it's an issue of subject matter jurisdiction.

16. The instructions included nothing about mens rea. Are they inadequate?

Questions 13, 14, and 15 are incorporated.

17. The instructions included nothing about Removal. Are they inadequate?

Procedurally speaking.

The municipal court never had jurisdiction over the first charge. It was ***facially*** a non-case; hence, civil. Civil matters may be Removed. Removal of a civil matter instantly terminates the state court's jurisdiction. When the matter is Removed, there is nothing pending in the state court, so no appearance for a "criminal" case could possibly be required.

Lack of mens rea.

Question 13 regarding mens rea is incorported. The charge is "Violation of Continuing Obligation to Appear". There has to be a mens rea. Whatever mens rea applies, it's negated via the Removal.

County court

18. Did BARRY have jurisdiction to proceed during Removal?

Questions 13 to 17 and 34 to 36 are incorporated. Whether there's a "federal question" isn't the issue. What matters is that these matters are non-cases; hence, civil. Removal of a civil matter triggers the automatic stay. § 1446(d). BARRY violated the stay by proceeding with these non-cases.

19. Is RJF still a Summoned parent?

RJF was (and is still) A.F.'s parent. The case was still active. It's **trial** *de novo*, not **suit** *de novo*. Thus, the Summons was still active. *Cf. Hopkins*.

20. Does Art. 45.0215 violate Due Process?

Question 8 is incorporated. Same song; second verse. BARRY prohibited RJF, the Summoned parent, from participating as a party.

21. Is a Summoned parent a party?

Questions 8, 9, and 20 are incorporated.

22. Did BARRY deny RJF's access by prohibiting RJF's participation as a party?

Questions 8, 9, 10, and 20 are incorporated.

23. Is a Summoned parent an indispensable party?

Questions 8, 11, and 20 are incorporated.

24. May BARRY exclude an indispensable party *and* maintain jurisdiction?

Questions 8, 11, 12, and 20 are incorporated.

25. When the cops ordered A.F. back into the townhouse, was she detained or arrested?

Clearly, A.F. was at least detained. Key, her freedom of movement was so restricted and privacy interests so invaded as to constitute an (illegal) arrest. *Cf. Shatzer*; *Kaupp*; *Hayes*; *Mathiason*; *Chimel* (warrant may be required for search even if arrest is lawful); *Sibron* (search *follows* arrest); *McArthur* (doorway (and beyond?) is "public").

26. There being no exigent circumstances, didn't the cops need a warrant to search inside the townhouse?

Warrantless search of a residence is per se unreasonable, except for consent or exigent circumstances. *Randolph* (consent is individual); *Groh* (search warrant requirements); *Kirk* (homes are highly protected, private places); *Kyllo* (thermal imaging ***is*** the search).

There were no exigent circumstances, and Petitioners find no evidence in the Record of effective consent. *Rodriguez* (STATE has to prove consent).

27. If a warrant was necessary, where's the consent to waive that requirement, and how was it communicated?

Question 26 is incorporated.

28. When the cops ordered A.F. to sit on the couch, was she detained or arrested?

Question 25 is incorporated.

29. Do these facts and circumstances demonstrate selective enforcement?

The extent of police discretion skyrockets off the top of the chart. In addition to the highly unequal "who goes and who stays" display, what can be more clear and convincing of the overt and arbitrary selectivity than the fact that the ***one person*** in the whole group extravagantly subject to § 106.04 (if it's valid) ***was never even ticketed***. *United States v. Armstrong* (evidentiary standard); *Batchelder* (arbitrary enforcement is bad).

30. Is a "group blow" breathalyzer test competent evidence?

Admissibility v. weight.

Looking at the *Kelly* criteria, the focus here is on the application of the technique, both in theory and as applied.

Petitioners have not (yet) found any prior case that addresses a "group blow" scenario. The typical case is DWI, where it's one testing unit and one

"driver". The first test in a "group blow" might be valid, but A.F. was not the first one NORS' tested.

In short, does the "group blow" scenario affect admissibility or "just" the weight? STATE provided no evidence that any testing unit, much less the one used here, is designed for a "group blow" scenario.

31. In a non-transportation matter, is a breathalyzer test admissible where there's no *Miranda* warning given?

Physical v. testimonial.

On the one hand, a breathalyzer test is physical, not testimonial, evidence. *Muniz*. On the other, such test *is* a search, *Skinner*, for which probable cause must *precede* the gathering of the physical evidence, *Welsh* (probable cause must *precede* search (via taking blood sample)).

32. Is this breathalyzer test admissible where there was no search warrant?

Questions 25 to 31 are incorporated. There was no warrant for anything; none for getting into the townhouse much less for any physical evidence.

33. Since this entire non-transportation matter involves a minor, where's the effective consent to a warrantless search?

No capacity to consent.

Question 13 regarding capacity is incorporated. As a minor, A.F. has no capacity to agree to anything

except acquiring necessaries. Thus, in general, how does she have capacity to consent to a search of anything? Does she even have capacity to consent to a search of her own home, much less this townhouse?

If the consent issue arose as a by-product of exercising a regulated privilege, e.g., driving, consent might be presumed. But, this is definitely not a "transportation" matter.

Duress, coercion.

The cops threatened to take A.F. downtown if she didn't "consent". She was effectively under arrest at the time. Either way, her consent was coerced. It was hardly voluntary. *Escobedo*, 378 U.S. at 490 n.14, *Miranda*, 384 U.S. at 475.

34. Does ALCO. BEV. CODE § 106.04 define an offense?

Question 13 is incorporated.

35. If so, does a charge under ALCO. BEV. CODE § 106.04 require proof of a mens rea?

Question 14 is incorporated.

36. Is the complaint defective where it alleges no mens rea?

Question 15 is incorporated.

37. Regarding the prosecutors, how much baseless prejudicing is too much?

STATE confessed that this case wasn't really about A.F. in the *voir dire*, by relentlessly pounding the concept that RJF was associated with some outfit called "Republic of Texas", whatever that is. The Record is some 1,300 pages, and the trial was a two-day extravaganza. Nothing of Record ever associated RJF with any such "Republic of Texas" outfit.

Maybe the panel realized the disconnect, as well. "Failure to Appear" – Not Guilty. RJF provided the main testimony about Removal.

38. Does a trial court acquire jurisdiction by entering a Not Guilty verdict?

No jurisdiction to reach merits.

Questions 18, 22, 24, and 34 to 36 are incorporated. A.F. (also) challenges the "Not Guilty" ruling for lack of jurisdiction. It's an adverse ruling because BARRY exercised jurisdiction he didn't have. Dismissal is the only lawful ruling.

Jurisdiction doesn't arise by the entrance of a ruling on the merits. To enter even a "Not Guilty" decision, authority to reach the merits must first exist. The municipal judge's being ***disqualified*** to try that charge isn't what negates it. Rather, at the time of that charge, (A) the municipal court lacked both (1) jurisdiction over the first charge and (2) commercial nexus for the charge, and at the time of the ruling, (B) BARRY lacked jurisdiction in totality.

There is no statute; it self-destructs. It punishes a minor in a context that requires a commercial nexus that is impossible for a minor to establish. Minors

don't have the capacity to agree to be regulated. Also, it can't apply anywhere but in the "public" context, which element is omitted from the language, and which context doesn't exist, here. Further, it's been construed to require no mens rea, which turns the teetotaler victim of clandestine Coke-spiking into a criminal, which can't ***possibly*** be the intent or purpose of that language. There has to be a mens rea, and *any*thing less than "knowingly" is unfair.

If the statute is valid, a mens rea is required, but none is alleged in the complaint.

At the time this second charge arose, exclusion of RJF from trial hadn't yet occurred, but it had (***twice*** over) by the time BARRY entered *his* ruling.

Fundamentally, NORS' § 106.04 "complaint" started a non-case. The "criminal case only" forum had no jurisdiction over the non-case not only from the void statute and NORS' faulty "complaint", but also via Removal. A court without jurisdiction can't create jurisdiction by its own bad acts.

Therefore, there was neither factual nor legal basis for any collateral "failure to appear" charge, originally. Nothing about trial *de novo* changed the statutory failure or the faulty "complaint". Both charges are bogus non-cases, as a matter of law.

Moreover, at the time BARRY entered the rulings, Remand was still eight months away.

Jurisdiction to reach the merits must exist *prior* to such ruling. It doesn't come *from* the ruling.

39. Did STATE ever satisfy its burden of proof?

No evidence of mens rea.

Questions 34, 35, and 36 are incorporated. STATE never charged or proved any mens rea. STATE bent over backwards arguing that none was required.

Jones Nat'l Bank (is there substantial evidence to support the charge?); *Sinclair*, 279 U.S. at 761 (no material evidence to support charge); *Alexander* (no evidence supporting two of the claims); *Bozza* (of the five counts, four were based on insufficient evidence); *Thompson*, 362 U.S. at 207 nn.12, 13 ("[It is] a violation of due process to convict and punish a man without evidence of his guilt."); *Garner* (Record so devoid of evidence as to render conviction a violation of Due Process); *Barr* (peaceful "sit-in" is not evidence of breach of peace); *Johnson*, 391 U.S. at 598 (no evidence supporting an element of the charge); *Vachon*, 414 U.S. at 480 ("It is beyond question, of course, that a conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged . . . violate[s] due process."); *Burks* (reversal based on insufficiency of evidence activates Double Jeopardy); *Haley* ("actual innocence" defense allows review of procedurally defaulted sufficiency challenge) (STATE's evidence insufficient to justify enhancement).

40. The instructions included nothing about mens rea. Are they inadequate?

Questions 34, 35, and 36 are incorporated. Petitioners submitted proposed instructions. Not one was granted. BARRY gave no mens rea instruction.

41. Does Art. 4.03 violate Due Process?

The "tyranny allowed zone".

Questions 1 and 2 are incorporated. In "criminal" cases, where the fine is $100 or less, no appeal exists except for a challenge to the statute on which the charge is based. Art. 4.03.

The *Crawford* analogy.

A STATE can't grant a privilege generally and then withdraw it on a case-by-case basis. *Crawford*.

Nothing *compels* a STATE to provide more protection of rights than the "minimum" federal standards. *Cf. Danforth* (concept applied in a procedural context). Key, there is no "federal" right to an appeal. But, where a STATE *does* so provide, STATE can't then exclude a certain class of cases from those added protections.

Compelled bifurcated "appeal".

Petitioners greatly doubt that STATE may allow *limited* appeal. "No appeal" is more self-consistent than "extremely limited appeal". E.g., to allow a statutory challenge but no *other* challenge, even to subject matter jurisdiction, is outrageous. A "small" fine is not *de minimis* where the judgment is void.

However, even if STATE may prohibit *appeal*, it's monstrous to prohibit ***all review*** of flagrant, glaring, egregious violations of *STATE's* standards and limitations. Further, the "tyranny allowed zone" policy *compels* bifurcated review even of the *federal* questions. By strangling the appeal, STATE compels a defendant to initiate both the state process and the federal process, via *Powell*, just to cover all the *federal* questions raised. Activating *Powell* doesn't trigger an appeal but rather a discretionary review, which scope may exclude state-law matters.

Extortion by structural design.

Review, whether appeal or discretionary, of the whole trial in a ***state*** court under STATE's standards ***must*** be available. STATE doesn't merely defy structural Due Process by prohibiting all meaningful review. STATE commits extortion, systemically.

There being no apparent way to review the municipal courts directly, they're already lawless, as shown here. But the problem doesn't stop there; it extends to the county courts. While the municipal courts aren't accountable via direct review under either state *or* federal standards, procedural *or* substantive, at least the county courts are accountable under federal substantive standards. But, there's the rub. No municipal court is directly accountable for ***state*** procedural or substantive errors for *any* matter. Similarly, no county court is directly accountable for ***state*** errors for matters within the "tyranny allowed zone".

Litigants in this system have a very long-standing expectation of review of some sort of the whole case, whether by appeal or discretionary review. A structure that prohibits review of the whole case defies Due Process. At least the "tax court" allows the "small" case petitioner the option of waiving appeal. Here, STATE compels waiver.

Given that the ***sole*** standard of review for matters in the "tyranny allowed zone" is *federal*, it's extortionate not to make those courts *federal* trial courts. Where the defendant faces any risk whatsoever that the ***sole*** standard for review is both federal and discretionary, for STATE to avoid extortion by structural design, STATE's trial court **must** be compelled to follow *federal* substantive *and procedural* standards from the outset of the matter.

How else may *this* Court, the ***sole*** Court in the entire system with authority to review the "whole" (federal side) of the case, even exercise its *discretionary* authority? [11] Where STATE effectively prohibits review under STATE's standards, those courts aren't *trial* courts or *state* courts. Such labeling suggests characteristics, qualities, and services that flat out don't exist. They're *so* autonomous as to fail to qualify as ***trial*** courts under *any* standard. [12] Since the only reviewable part is the *federal* part, they're not *state* courts, either. But, STATE doesn't limit those forums to federal standards. Instead, STATE compels those defendants into "courts" that operate by ***state*** procedures and standards to which they are then ***never*** held accountable directly. As proved here, such autonomous structure allows those "judges" to act wholly outside the confines of the law, in flagrant violation of the defendants' rights recognized by both the state *and* federal standards.

Objections/rights compelled waived.

Via the "tyranny allowed zone", STATE abrogates protection not only of rights recognized federally, *cf. Danforth* (citing *Harper* (citing *McKesson Corp.*, 496 U.S. at 52 n.36)), *American Trucking Assns., Inc.*, 496 U.S. at 210-11, but also of rights created by, recognized by, STATE. *Cf. Crawford.*

A "statutory challenge only" appeal compels waiver of at least the following: Notice; subject

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[11] Obviously, the criminally violated defendant may file suit (in a federal court), but that simply confirms that anything shy of criminal conduct passes muster. In theory, surely, we're beyond that guttural level of society, and practically, how many who *are* criminally violated are going to sue those judges?!

[12] Texas has one "supreme" court, and those offices are filled via *state*wide *elections*, not municipal appointment.

matter jurisdiction, e.g., standing, ***disqualification***, commercial nexus, indispensable parties; discovery; evidence (burden); evidentiary privileges; Double Jeopardy; all other relevant statutory challenges, and etc., effectively ***all*** substantive and procedural rights otherwise recognized by STATE. Also, just to get review of all *federal* issues beyond the statutory challenge, one must activate the bifurcated "appeal", which is a discretionary review.

State appellate court

These two matters arose during the appeal.

42. Does TEX. R. APP. P. 25.2(d) violate Due Process?

There's got to be a better way.

The appellate court threatened dismissal for lack of a certificate. Petitioners moved to strike the rule.

Punishing the defendant for what a judge does or doesn't do isn't just outrageous. It's conscious-shocking. If the ***defendant*** is to be held responsible, then the ***defendant*** has to be in control of it.

If what controls the scope of appeal is the defendant's plea, then the defendant should verify the *plea* in, or attach the plea to, the Notice of Appeal. Surely the concepts may be put into a form so as to ease the Sheriff's job. Rather than a *judge's* certificate, over which no defendant has the slightest bit of control, it'd be a *defendant*'s certificate. Defendant's appeal—defendant's chose in action—defendant's certificate. Maybe the *defendant's* plea,

now a jurisdictional statement, is something to be filed (and filestamped) during the trial phase, just as if it were a real pleading in a real judicial proceeding, as in a writing signed under TEX. R. CIV. P. 13, complete with first, second, supplemental, amended, etc., notions and rules that apply to pleadings.

Non-mootness.

Since this matter is civil, this issue may become moot. This matter has been characterized *both* ways, and both Petitioners may need to defend themselves in the future, including appeal. Thus, the mootness exception applies. *Spencer*, 523 U.S. at 17-18.

43. Does GOV'T CODE § 22.220 apply?

Civil v. criminal.

Questions 4 and 41 are incorporated, as are 34, 35, and 36.

GOV'T CODE § 22.220(a) is another "tyranny allowed zone" appellate jurisdictional limit. The appellate courts have jurisdiction over **civil** cases where the judgment ***or*** amount in controversy exceeds $100. [13]

ALCO. BEV. CODE § 106.071(b) calls an alleged violation of § 106.04 a Class C misdemeanor. That instantly sets the amount in controversy at $500. [14] PENAL CODE § 12.23. *Cf. Colten.* All such matters are non-cases until STATE proves "criminal" standing.

Since there is no statute and/or no competent "complaint", this matter was always a non-case, i.e., civil. Therefore, § 22.220(a) necessarily applies, and STATE's appellate courts had/have jurisdiction based on the amount in controversy.

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[13] Now $250, effective 1 Sep 2009.

[14] *But see* Summons to RJF: "Maximum fine amount: $552."

Relief Requested

Premises considered, Petitioners request relief as follows:
(A) Grant the petition and take jurisdiction;
(B) Declare that courts of no Record violate structural Due Process;
(C) Declare that trial *de novo* is an inadequate form of review, and that such review violates Due Process;
(D) Declare Art. 45.018(b) void, because one day's Notice is not meaningful;
(E) Declare that for there to be actionable non-appearance, there must first be an actionable case or controversy;
(F) Declare that the judge ordering A.F. charged with "failure to appear" is the "complainant";
(G) Confirm that a complaining judge is ***disqualified*** from presiding over that case;
(H) Declare the municipal court's *ex parte* ruling void;
(J) Declare Art. 45.0215 void as denying access; "minor" is set regarding parental participation but "minor" floats for purposes of the various charges;
(K) Declare Art. 45.0215 void via the practice of excluding Summoned parents;
(L-1) Declare that the municipal court's excluding the Summoned parent violates Due Process and denies access;
(L-2) Declare that BARRY's excluding the Summoned parent violates Due Process and denies access;
(M) Declare that the Summoned parent is an indispensable party;
(N) Confirm that excluding indispensable parties from trial terminates subject matter jurisdiction;

(P) Declare that ALCO. BEV. CODE § 106.04 defines no offense;
(Q) If § 106.04 defines an offense, Declare that it requires a mens rea;
(R) Declare that the "complaint" is facially defective for failure to allege any mens rea;
(S-1) Declare that the municipal court instructions were inadequate for failure to include any mens rea;
(S-2) Declare that BARRY's instructions were inadequate for failure to include any mens rea;
(T) Declare that the municipal court instructions were inadequate for failure to include anything about Removal;
(V) Declare that BARRY violated the automatic stay by proceeding during Removal;
(W) Declare that A.F. was under arrest when ordered to go back into the townhouse;
(X) Confirm that the cops needed a warrant to gain lawful entrance into the townhouse;
(Y) Declare that there was no effective consent allowing any warrantless search of the townhouse;
(Z) Declare that A.F. was under arrest when ordered to sit on the couch;
(AA) Declare that these facts and circumstances clearly and convincingly show selective enforcement;
(BB) Declare that a "group blow" breathalyzer test result is without scientific support, in theory and/or in practice, and that such results are inadmissible;
(CC) Declare that A.F. was entitled to *Miranda* warnings prior to being given the breathalyzer test, and that the failure of such warnings renders the test inadmissible;
(DD) Declare that the threats to take A.F. downtown for refusing to consent rendered the test non-consensual, thereby requiring a warrant, etc.,

rendering the test results inadmissible;
(EE) Declare that unemancipated minors have no capacity to consent to warrantless searches;
(FF) Declare that BARRY never had jurisdiction to reach the merits of either charge;
(GG) Declare that STATE never satisfied its burden;
(HH) Declare that Art. 4.03, which sets up the $100 "tyranny allowed zone", violates structural Due Process;
(JJ) Declare that TEX. R. APP. P. 25.2(d) violates Due Process;
(KK) Declare that GOV'T CODE § 22.220 applies;
(LL) Vacate all rulings necessary, and remand to the appropriate court with instructions to dismiss;
(MM) Allow Petitioners to brief additional issues; and
(NN) Grant Petitioners any and all other relief at law, in equity, or sui generis, to which they may show themselves justly entitled.

Respectfully submitted,

/s/ Amanda Florance
Amanda Florance, a minor for all purposes for this case

/s/ Richard John Florance, Jr.
Richard John Florance, Jr., the Summoned parent

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Appendix A

Rule 14.1(i)(i)—Discretionary Review

2010 May 5—Petition Refused

[Watermark SEAL of COURT OF CRIMINAL APPEALS OF TEXAS]

OFFICIAL NOTICE FROM
COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION,
AUSTIN, TEXAS 78711

Wednesday, May 5, 2010
RE: Case No. PD-0424-10
COA#: 05-08-00707-CR
STYLE: FLORANCE, AMANDA JEAN

On this day, the Appellant's Pro Se petition for discretionary review has been refused.

Louise Pearson, Clerk

AMANDA JEAN FLORANCE
C/O RICHARD JOHN FLORANCE JR
1908 VASSAR DR
RICHARDSON TX 75081

[Pitney Bowes meter mark:
UNITED STATES POSTAGE
PITNEY BOWES
0 2 1R $ 00.21[8]
0006558486 MAY 05 2010
MAILED FROM ZIP CODE 78701]

Rule 14.1(i)(ii)—Additional Orders

State appellate court

2009 May 8—Opinion

AFFIRMED as MODIFIED; Opinion Filed May 8, 2009.

[Seal of THE STATE OF TEXAS]

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-08-00707-CR

AMANDA JEAN FLORANCE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 3
Collin County, Texas
Trial Court Cause No. 003-81453-06

OPINION

Before Justices FitzGerald, Lang, and Lagarde [1]
Opinion By Justice Lang

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[1] The Honorable Sue Legarde, Justice, Court of Appeals, Fifth District of Texas at Dallas, Retired, sitting by assignment.

Amanda Jean Florance, *pro se*, appeals two county court judgments in her appeal from the municipal court by trial de novo. The first judgment from which she appeals is one acquitting her of the offense of failure to appear in trial court cause no. 003-81451-06. The second judgment is one convicting her of consumption of alcohol by a minor in trial court cause no. 003-81453-06. The second judgment was rendered after a jury found Florance guilty of consumption of alcohol by a minor, a Class C misdemeanor, and the county court assessed her punishment at a fine in the amount of $75. [⊥ 2]

Florance raises nine issues on appeal arguing: (1) this case is a civil appeal and, as a result, the municipal court never had jurisdiction; (2) her right to due process is violated by article 45.0215 of the Texas Code of Criminal Procedure, which requires parents of minors subject to municipal and justice court proceedings to be summoned before the court accepts a not guilty plea; (3) her right to due process is violated by article 4.03 of the Texas Code of Criminal Procedure, which provides that courts of appeals do not have jurisdiction over cases appealed from an inferior court to the county court, in which the fine imposed by the county court does not exceed one hundred dollars, unless the sole issue is the constitutionality of the statute on which the conviction is based; (4) her right to due process is violated by Texas Rule of Appellate Procedure 25.2(d), which requires the trial court to certify the defendant's right of appeal; (5) section 106.04 of the Texas Alcoholic Beverage Code is unconstitutional because it is vague and over broad, invades her right to privacy, it is codified outside the penal law without

a commercial nexus, and fails to require a culpable mental state; (6) the evidence is insufficient because there is no evidence to prove a commercial nexus or public context to the offense and no evidence of mens rea; (7) her right to due process was violated by the trial court's instructions to the jury because those instructions failed to include the culpable mental state; (8) the police seized her without probable cause or an arrest warrant and failed to give her the Miranda warnings before administering the breathalyzer test; and (9) the county court erred when it entered a judgment of acquittal in the failure to appear case because both the municipal court and county court did not have jurisdiction and should have ordered the case dismissed. In addition, Florance argues we should also consider each issue challenging a statute to include an independent issue seeking a declaratory judgment.

We conclude this case should be reclassified as an appeal of a criminal conviction. This Court does not have jurisdiction to review Florance's issue appealing the county court's judgment in trial [⊥ 3] court cause no. 003-81451-06, acquitting her in the failure to appear case. Florance's issue appealing the county court's judgment in trial court cause no. 003-81451-06 is dismissed. Also, because the county court assessed her punishment at a fine in the amount of $75, this Court does not have jurisdiction to review Florance's issues other than her challenge to the constitutionality of the statute on which her conviction is based, i.e., section 106.04 of the Texas Alcohol and Beverage Code. We conclude that statutory section is not unconstitutional. The county court's judgment in trial court cause no. 003-81453-

06 is affirmed.

I. CLASSIFICATION OF THE APPEAL

As a preliminary matter, we must address the classification of this appeal. The State argues this case was improperly reclassified as a civil appeal of a juvenile proceeding. The State contends that, although Florance was a minor at the time of the offense, she was charged with a Class C misdemeanor punishable by a fine only and tried in a criminal court. Also, the State argues the case was never transferred to juvenile court, so the special provisions for juvenile proceedings do not apply. In her first issue, Florance argues this Court properly reclassified this case as a civil appeal and, as a result, the municipal court should have dismissed the case for lack of jurisdiction. *See also In re A Purported Lien or Claim Against Taylor*, 219 S.W.3d 620, 621 (Tex. App.—Dallas 2007, no pet.), [*] *cert. denied Florance v. Taylor*, 128 S.Ct. 317 (2007).

A. This Court Reclassified the Criminal Appeal as a Civil Appeal on its Own Motion

This appeal was belatedly filed with this Court due to the county clerk's inadvertent failure to transmit the notice of appeal when it was filed. The notice of appeal was filed in July 2006 and signed by both Florance and her father, Richard John Florance, Jr., but was not received by this Court until May 2008. Based on the information in the notice of appeal and the docketing statement, the appeal was docketed as a criminal appeal. On June 16, 2008, this

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[*] [N.B. Pet'n denied. No. 07-0376 (Tex. 22 Jun 2007). *RJF*]

Court abated the appeal and [⊥ 4] ordered the county court to make certain findings regarding indigence, appellate counsel, and the record.

On July 25, 2008, this Court reinstated the appeal and adopted the county court's findings derived after a hearing that: (1) Florance was tried in cause nos. 003-81451-06 and 003-81453-06; (2) a verdict of not guilty was returned in trial court cause no. 003-81451-06, but Florance filed a notice of appeal anyway; (3) the notice of appeal also referenced trial court cause no. 003-81453-06 for which a finding of guilty was entered; (4) Florance desired to prosecute the appeal; (5) Florance is not indigent; (6) Florance requested and paid for the reporter's record; (7) the court reporter tendered the record to this Court, but it was returned to her when no notice of appeal was filed with this Court; (8) Florance had not yet formally requested or paid for the clerk's record; and (9) Florance had not yet retained counsel and is not eligible for court-appointed counsel.

Also, after reviewing the record of the county court's hearing, this Court noted that Florance told the county court she was sixteen at the time of the offense of consumption of alcohol by a minor for which she was convicted and fined. Also, Florance was twenty years of age at the time of that hearing. In light of the county court's findings and the information contained in the reporter's record, this Court directed the Clerk of this Court to change the style of the case to "*In the Matter of A.F., A Minor*," to identify the appeal as a civil appeal, rather than a criminal appeal, and to list Richard Florance as the contact person for the appeal.

B. Appeal Classified as Criminal or Civil?

We now review the matter of classification by examining the following considerations. First, although Florance was sixteen years of age at the time of the offense, the municipal court's judgment in trial court cause no. 2005007697 was styled "State v. Florance, Amanda Jean," and states she entered a plea of not guilty, the jury found her guilty of the offense of consumption of alcohol by a [⊥ 5] minor, a Class C misdemeanor, and the municipal court assessed her punishment at a fine in the amount of $305. *Compare* TEX. CODE CRIM. PROC. ANN. art. 37.07 § 1(b) (Vernon Supp. 2008), 42.01 § 1 (Vernon 2006), *with* TEX. FAM. CODE ANN. § 54.03(f) (Vernon 2008). Similarly, in the appeal by trial de novo, the county court's judgment in trial court cause no. 003-81453-06 was styled "The State of Texas vs. Amanda Jean Florence [sic]," and states she entered a plea of not guilty before the jury, the jury found her guilty of the misdemeanor offense of consumption of an alcoholic beverage by a minor, and the county court assessed her punishment at a fine in the amount of $75. *Compare* TEX. CODE CRIM. PROC. ANN. art. 37.07 § 1(b), 42.01 § 1, *with* TEX. FAM. CODE ANN. § 54.03(f). The judgment acquitting Florance of the offense of failure to appear in trial court cause no. 003-81451-06 was styled "The State of Texas vs. Amanda Jean Florence [sic]," and states she entered a plea of not guilty before the jury and the jury found her not guilty. *Compare* TEX. CODE CRIM. PROC. ANN. art. 37.07 § 1(b), 42.01 § 1, *with* TEX. FAM. CODE ANN. § 54.03(f).

Second, municipal courts have jurisdiction of prosecutions for violations of section 106.04 of the

Texas Alcoholic Beverage Code. *See* TEX. CODE CRIM. PROC. ANN. art. 4.14(b) (Vernon 2005); *see also* Op. Tex. Att'y Gen. No. DM-427 (1996); Op. Tex. Att'y Gen. No. JM-380 (1985). The parties do not allege and there is nothing in the record indicating Florance was previously convicted of two or more misdemeanors punishable by fine only, which would have required the transfer of her case to the juvenile court. *See* TEX. FAM. CODE ANN. § 51.08(b)(1). Further, there is nothing suggesting the municipal or county courts in their discretion transferred or intended to transfer Florance's cases to juvenile court. *See id.* § 51.08(2).

Third, the municipal court, county court, and the State have not treated the records in this case as confidential, e.g., they use Florance's full name on documents. *See* TEX. FAM. CODE ANN. §§ 58.005, 58.007(a). Nor does the record show there has been a motion or order sealing the records in [⊥ 6] this case. *See id.* § 58.003(a).

Finally, during the appeal by trial de novo in the county court, Florance stated she was eighteen years old and she represented herself. *Compare* TEX. CODE CRIM. PROC. ANN. art. 1.051 (Vernon 2005), 45.060, 45.021 5(a),(b), 45.057(e), 45.0215(b) (Vernon 2006), *with* TEX. FAM. CODE ANN. §§ 51.09, 51.10(b). Florance's father wanted to ask questions and assist her in the trial. The State objected to her father's participation on the ground that it constituted the unauthorized practice of law without a license. The county court told Florance's father he would not be permitted to ask questions of witnesses or advocate on his daughter's behalf. Although the record shows Florance was sixteen at the time of the offense, it

does not show how old Florance was at the time of her trial in the municipal court. Also, the record does not contain a reporter's record for the municipal court proceedings, so there is nothing in the record showing the type of representation Florance received during those proceedings, except that the municipal court's judgment states "the defendant appeared without counsel."

We conclude these proceedings are criminal. Accordingly, we reclassify this case as an appeal of a criminal proceeding. Issue one is decided against Florance.

II. JURISDICTION

First, in issue nine, Florance argues the county court erred when it entered a judgment of acquittal in the failure to appear case because both the municipal court and county court did not have jurisdiction and should have ordered the case dismissed. The State responds that judgments of acquittal do not present a legal issue for the courts of appeal to resolve. A defendant in a criminal case has the right to appeal a judgment of conviction. *See* TEX. R. APP. P. 25.2(a)(2) (defendant has right to appeal and trial court shall enter certification of defendant's right to appeal each time it enters judgment of guilt or other appealable order); *see also Florance v. State*, No. 05-08-00724-CR, 2008 [⊥ 7] WL 2426719, *1 (Tex. App.—Dallas Jun. 17, 2008, pet. ref'd) (mem. op.) (not designated for publication) [2] (as a general

[2] Opinions not designated for publication by the court of appeals have no precedential value, but may be cited with the notation "(not designated for publications)." TEX. R. APP. P. 47.7.

rule, an appellate court may consider appeals by criminal defendant only after conviction), *cert. denied* 129 S.Ct. 1355 (2009); *cf.* TEX. CODE CRIM. PROC. ANN. art. 44.01 (Vernon Supp. 2008) (describing State's right to appeal); TEX. R. APP. P. 25.2(a)(1) (same). Accordingly, we do not have jurisdiction to review issue nine, where Florance challenges her judgment of acquittal in the failure to appear case.

Second, Florance argues we should consider each issue challenging a statute to include an independent issue seeking a declaratory judgment. A defendant may not seek declaratory relief regarding the constitutionality of the enforcement of criminal laws. *See In the Matter of A.F.*, No. 05-05-01435-CV, 2006 WL 1728035, *2 (Tex. App.—Dallas Jun. 13, 2006, pet. denied) (mem. op.) (citing *Franklin v. Kyle*, 899 S.W.2d 405, 409 (Tex. App.—Waco 1995, no pet.)), *cert. denied A.F. v. Texas*, 549 U.S. 1208 (2007). Accordingly, we do not have jurisdiction to review Florance's declaratory judgment claims.

Third, in issues six through eight, Florance directly appeals her judgment of conviction for consumption of alcohol by a minor. In issues two through four, Florance challenges the constitutionality of articles 45.0215 and 4.03 of the Texas Code of Criminal Procedure and Texas Rule of Appellate Procedure 25.2(d). The States argues the county court assessed Florance's punishment at a fine in the amount of $75 and an intermediate court of appeals has jurisdiction over criminal appeals from the county courts only if the fine imposed exceeds $100.

The courts of appeals have appellate jurisdiction

in all criminal cases except those in which the death penalty has been assessed. See TEX. CODE CRIM. PROC. ANN. art. 4.03 (Vernon 2005). [1 8] However, that jurisdiction does not embrace any case which has been appealed from an inferior court to the county court in which the fine imposed by the county court does not exceed $100, unless the sole issue is the constitutionality of the statute on which the conviction is based. *See id.* Accordingly, we do not have jurisdiction to review issues six through eight, which challenge Florance's judgment of conviction because the trial court assessed her punishment at a fine in the amount of $75. *See id.* Also, although Florance challenges the constitutionality of various statutes and rules in issues two through four, we do not have jurisdiction to review those issues because they challenge the constitutionality of statutes and rules other than the statute on which she was convicted. *See id.* We have jurisdiction only to review the constitutionality of the statute on which Florance's judgment of conviction is based, i.e., section 106.04 of the Texas Alcoholic Beverage Code. *See id.* Accordingly, we will address issue five.

III. CONSTITUTIONALITY OF SECTION 106.04

In issue five, Florance argues section 106.04 of the Texas Alcoholic Beverage Code is unconstitutional because it is vague and over broad, invades her right to privacy, [sic] it is codified outside the penal law without a commercial nexus, and it fails to require a culpable mental state. The State responds the statute clearly proscribes minors from consuming alcohol, the statute does not invade her right to privacy because the State has a legitimate

interest in preventing minors from consuming alcohol, and the statute is not required to have a culpable mental state because it plainly dispenses with the requirement and does not restrict freedom of speech.

Section 106.04 of the Texas Alcoholic Beverage Code provides:

> (a) A minor commits an offense if he consumes an alcoholic beverage.
>
> (b) It is an affirmative defense to prosecution under this section that the alcoholic beverage was consumed in the visible presence of the minor's adult parent, guardian, or spouse. [⊥ 9]
>
> (c) An offense under this section is punishable as provided by Section 106.071.
>
> (d) A minor who commits an offense under this section and who has been previously convicted twice or more of offenses under this section is not eligible for deferred disposition. For the purposes of this subsection:
>
> (1) an adjudication under Title 3, Family Code, [footnote om'.ed] that the minor engaged in conduct described by this section is considered a conviction of an offense under this section; and
>
> (2) an order of deferred disposition for an offense alleged under this section is considered a conviction of an offense under this section.

TEX. ALCO. BEV. CODE ANN. § 106.04 (Vernon 2007).

A. Standard of Review

When a reviewing court is confronted with an attack on the constitutionality of a statute, it presumes the statute is valid and the legislature has not acted unreasonably or arbitrarily. *Ex parte Granviel*, 561 S.W.2d 503, 511 (Tex. Crim. App. 1978); *see also State v. Florance*, No. 05-07-00088CR, 2007 WL 2460088, *3 (Tex. App.—Dallas Aug. 31, 2007, pet. dism'd) (not designated for publication). The burden rests on the individual who challenges the statute to establish its unconstitutionality. *Ex parte Granviel*, 561 S.W.2d at 511; *see also Florance*, 2007 WL 2460088 at *3. In the absence of contrary evidence, a reviewing court presumes the legislature acted in a constitutionally sound fashion. *Rodriguez v. State*. 93 S.W.3d 60, 69 (Tex. Crim. App. 2002); *see also Florance*, 2007 WL 2460088 at *3. If a statute does not substantially implicate constitutionally protected conduct or speech, it is valid unless it is impermissibly vague in all applications. *State v. Holcombe*, 187 S.W.3d 496, 499 (Tex. Crim. App. 2006) (citing *Village of Hoffman Estates v. Flipside, Hoffman Estates. Inc.*, 455 U.S. 489, 495 (1982)), *cert. denied*, 549 U.S. 824 (2006); *see also Florance*, 2007 WL 2460088 at *3.

B. Section 106.04 is Not Vague or Over Broad

Florance argues section 106.04 is vague and over broad because according to her, the statute [⊥ 10] provides no notice or fair warning that persons will beheld criminally responsible for conduct they could not reasonably understand to be proscribed. The State responds that section 106.04 is not vague because it unambiguously provides it is an offense for

a minor to consume alcohol and section 106.01 defines a minor as a person under the age of twenty-one. *See* TEX. ALCO. BEV. CODE ANN. §§ 106.01, 106.04.

A reviewing court must make a two-part inquiry to determine if a criminal statute is void for vagueness. It requires a criminal statute to define the offense: (1) with sufficient specificity that ordinary people can understand what actions are prohibited; and (2) in a manner that does not permit arbitrary and discriminatory enforcement. *See Holcombe*, 187 S.W.3d at 499; *see also Florance*, 2007 WL 2460088 at *4. Either the lack of notice or lack of guidelines for law enforcement is an independent ground for finding a statute void for vagueness. *Adley v. State*, 718 S.W.2d 682, 685 (Tex. Crim. App. 1985).

We conclude section 106.04 is not void for vagueness or over broad. It is specific in its terms. It does not substantially implicate constitutionally protected conduct or speech. Also, it is not defined in such a manner that permits arbitrary and discriminatory enforcement. *See also Gillum v. State*, 788 S.W.2d 443, 446 (Tex. App.—Houston [1st Dist.] 1990, pet. ref'd) (section 106.04 does not discriminate between married and unmarried minors or violate equal protection clause).

C. Section 106.04 Does Not Invade the Right to Privacy

Florance argues section 106.04(b) is unconstitutional because it violates her right to privacy. She claims the statute is necessarily limited to a "public context," but that "public element" is

missing from the offense. Also, she argues the exception to the offense for minors in the visible presence of a consenting adult parent, guardian, or spouse, shows the statute violates the right to privacy because it should not matter whether the consumption is in close proximity to a consenting parent. *See* TEX. [⊥ 11] ALCO. BEV. CODE ANN. § 106.04(b). Florance acknowledges the "State has a legitimate purpose in addressing ***public*** intoxication of minors (and adults)." (Emphasis in orig.) However, relying on *Lawrence v. Texas*, she contends "where residents may defend themselves by use of firearms in their private residences, and where citizens may have engage [sic] in 'not for profit' homosexual acts in their private residences, it stands to reason that residents and citizens may expect privacy within a residence regarding 'not for profit' consumption of alcohol." *See Lawrence v. Texas*, 539 U.S. 558 (2003). The State responds a public element is not required because there are many offenses that may occur in the privacy of a residence, e.g., murder and possession of a controlled substance.

An individual's right to privacy has been recognized by both federal and Texas courts. The United States Supreme Court has construed the United States Constitution to confer a limited right of privacy for individuals to make certain fundamental decisions or to engage in certain conduct. *See City of Sherman v. Henry*, 928 S.W.2d 464, 469 (Tex. 1996). The right to privacy affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education. *Lawrence*, 539 U.S. at 573-74. An implicit right of

privacy under the Texas Constitution has also been acknowledged by the Texas Supreme Court. *See Billings v. Atkinson*, 489 S.W.2d 858 (Tex. 1973). The Texas Supreme Court has stated the right to privacy has been defined as the right of an individual to be left alone, to live a life of seclusion, and to be free from unwarranted publicity. *Id.* at 859.

We do not agree with Florance that the authority she cites can be stretched to encompass her contention that criminal offenses must have a "public context" or contain a "public element," rendering section 106.04 of the Texas Alcoholic Beverage Code unconstitutional. *See Miller v. State*, 458 S.W.2d 680, 684 (Tex. Crim. App. 1970) (statute prohibiting possession of marijuana not unconstitutional, no right to privately possess and enjoy controlled substance in private residence); [⊥ 12] *accord Leary v. United States*, 544 F.2d 1266, 1270 (5th Cir. 1977) (same). We agree with the State that there are many criminal offenses that may be committed in a private residence, to name only a few, e.g., murder, sexual assault, burglary of a habitation, and possession of a controlled substance. We cannot agree with Florance that because such offenses occurred in a private residence, their enforcement is an unconstitutional invasion of the right to privacy. Accordingly, we conclude section 106.04 is not unconstitutional because it does not invade Florance' s right to privacy.

D. Offense of Consumption of Alcohol by a Minor May Be Codified Outside the Penal Code

Florance argues section 106.04 is codified outside the penal code without a commercial nexus. She

claims "[n]o offense codified outside the penal code exists without a commercial nexus" and it is legally impossible for a minor to contract. There is no requirement that a penal offense be codified within the Texas Penal Code. *See Morton v. State*, 935 S.W.2d 904, 906 (Tex. App.—San Antonio 1996, no pet.). The fact that a statute is codified somewhere other than the Texas Penal Code is not a dispositive indication of whether the statute may be prosecuted as a criminal offense. *See id.* Accordingly, we conclude section 106.04 is not unconstitutional because it is codified outside of the Texas Penal Code.

E. Section 106.04 Is Not Required to Have Mens Rea Element

Florance argues section 106.04 is unconstitutional because a criminal offense must require a culpable mental state. She claims section 106.04 does not expressly dispense with the culpable mental state. As a result, she argues section 6.02 of the Texas Code of Criminal Procedure applies and, pursuant to section 1.08, alcohol-related offenses require a mens rea of at least criminal negligence. In her reply brief, she argues "if there is no mens rea, there is simply no definition of a crime. There may be civil/commercial liability without a mens rea element, but there is no ***criminal*** liability without it." (Emphasis in orig.). She claims that without a mens rea element, the State has [⊥ 13] made breach of contract a criminal offense. The State responds that not all crimes require a culpable mental state. The State argues that section 106.04 is a *malum prohibitum* offense and, as such, requires no mental state.

1. Applicable Law

A strict liability statute is based on the principle that a person who commits an act in violation of the law may be held criminally liable even though he might be innocent of any criminal intent. *See State v. Walker*, 195 S.W.3d 293, 298 (Tex. App.—Tyler 2006, no pet.). If a statute plainly dispenses with a culpable mental state as an element of the offense, it is a strict liability statute. *See Walker*, 195 S.W.3d at 298. Many strict liability offenses are Class C misdemeanors, a conviction for which does not impose any legal disability or disadvantage. *Aguirre v. State*, 22 S.W.3d 463, 472 (Tex. Crim. App. 1999).

Where no mental state is specified in a statute, section 6.02 of the Texas Penal Code provides a default rule that, unless the definition of the offense "plainly dispenses with any mental element," if a mental state is not specified in a statute, "intent, knowledge, or recklessness suffices to establish criminal responsibility." TEX. PENAL CODE ANN. § 6.02 (Vernon 2005); *see Robledo v. State*, 126 S.W.3d 150, 153 (Tex. App.—Houston [1st Dist.] 2003, no pet.). The Texas Court of Criminal Appeals has established guidelines for determining whether a statute dispenses with a culpable mental state. *See Aguirre*, 22 S.W.3d at 472.

First, the statute is examined to determine whether it contains an affirmative statement that the conduct is a crime though done without fault. *Id.* at 471. Silence about whether a culpable mental state is an element of an offense leaves a presumption that one is required. *See Lornax v. State*, 233 S.W.3d 302, 304 (Tex. Crim. App. 2007);

Aguirre, 22 S.W.3d at 472.

Second, in the absence of an express intent to dispose with the requirement of a culpable [⊥ 14] mental state, the statute is examined to determine whether such an intent is manifested by other features of the statute. *See Lornax*, 233 S.W.3d at 304; *Aguirre*, 22 S.W.3d at 472. These features include: (1) the language of the statute; (2) the nature of the offense as either *malum prohibitum* or *malum in se*; (3) the subject of the statute; (4) the legislative history of the statute; (5) the seriousness of harm to the public; (6) the defendant's opportunity to ascertain the true facts; (7) the difficulty in proving a culpable mental state; (8) the number of prosecutions expected; and (9) the severity of the punishment. *Aguirre*, 22 S.W.3d at 472-76.

2. Application of the Law to the Facts

In order to address Florance's issue, we must first ascertain whether section 106.04 is a strict liability offense or requires a culpable mental state. Then, we must determine whether the absence of a culpable mental state in section 106.04 renders the statute unconstitutional.

Section 106.04 does not contain an affirmative statement that the conduct is a crime though done without fault. As a result, to determine whether section 106.04 requires a culpable mental state, we must examine whether such an intent is manifested by other features of the statute.

First, we examine the language of section 106.04. That section states "a minor commits an offense if he consumes an alcoholic beverage." TEX. ALCO. BEV.

CODE ANN. § 106.04(a). It clearly omits a culpable mental state. When considering the language of a statute, the omission of a culpable mental state is a clear implication of the legislature's intent to dispense with a mental element in that section. *See Lornax*, 233 S.W.3d at 304; *Aguirre*, 22 S.W.3d at 473. If any section of the statute prescribes a mental state while another section omits a mental state, it is presumed the legislature intended to dispense with a mental element in that section. *Aguirre* 22 S.W.3d at 473. Other sections in chapter 106 of the Texas Alcoholic Beverage Code prescribe a mental state. *See* TEX. ALCO. BEV. CODE ANN. § 106.03, 106.06 (criminal negligence).This factor weighs against [⊥ 15] requiring a culpable mental state.

Second, we examine the nature of the offense proscribed in section 106.04. Strict liability is associated with civil violations that incur only a fine and criminal offenses characterized as *malum prohibitum*. *Aguirre*, 22 S.W.3d at 472; *see also State v. Howard*, 172 S.W.3d 190, 193 (Tex. App.—Dallas 2005, no pet.). *Mala prohibita* offenses are acts that are crimes merely because they are prohibited by statute, although they are not necessarily immoral. *See Howard*, 172 S.W.3d at 193. By contrast, *mala in se* offenses are acts that are inherently immoral and require a culpable mental state. *See id.* The implication is that a strict liability offense must be *malum prohibitum*. *Aguirre*, 22 S.W.3d at 473. Because a violation of section 106.04 cannot be considered inherently immoral, it is a *malum prohibitum* offense. This factor weighs against requiring a culpable mental state.

Third, we examine the subject of the section 106.04. Strict liability statutes are traditionally associated with laws protecting the public health, safety, or welfare, as to the element of a child's age in statutes that protect children, and laws designed to protect children. *See id.* at 473, 475; *Grice v. State*, 162 S.W.3d 641, 647 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd) (laws designed to protect children). The class of public safety statutes courts have found to impose strict liability comprises statutes that punish dangerous activities which may result in serious physical injury or death to members of the public. *See id.* at 475 & n.47. Section 106.04 regulates the consumption of alcohol by minors and is designed to protect children. This factor weighs against requiring a culpable mental state.

Fourth, we examine the legislative history of section 106.04, its title, and context. The only significant legislative history for this statute is the addition of an affirmative defense and to move the prescribed punishment to section 106.071. The statute is titled "Consumption of Alcohol by a Minor." It is found in chapter 106 which is titled "Provisions Relating to Age." This factor weighs [⊥ 16] against or is at least neutral regarding whether a culpable mental state is required.

Fifth, we examine the seriousness of the harm to the public which may be expected to follow from the forbidden conduct. *See Aguirre*, 22 S.W.3d at 476. Generally, the more serious the consequences to the public, the more likely the legislature intended to impose liability without regard to fault. *See Walker*, 195 S.W.3d at 299. In most strict liability offenses, the statutes protect unwitting and unwilling

members of the public from the noxious and harmful behavior of others in situations in which it would be difficult for members of the public to protect themselves. *See id.* Such statutes involve serious risk to the public, including serious physical injury or death. *See id.* Section 106.04 is designed to protect minors from the risks associated with the consumption of alcohol. These risks could conceivably include intoxication and alcohol poisoning, among other things, which could result in serious injury or death to the minor or members of the public. This factor weighs against requiring a culpable mental state.

Sixth, we examine Florance's opportunity to ascertain the true facts. A minor would have little difficulty in determining he was consuming alcohol and his incentive to ascertain he was consuming alcohol would seem high given its intoxicating effects. Even if his beverage were "spiked," in most situations, it is possible for the minor to detect the alcohol and immediately cease consuming the beverage. We would have difficulty saying a minor is not in a position to prevent the violation. Further, it is well-known that persons under the age of twenty-one may not purchase or consume alcohol in this state. This factor weighs against requiring a culpable mental state.

Seventh, we examine the difficulty prosecutors would have in proving a mental state for this type of crime. *See Aguirre*, 22 S.W.3d at 476. The greater the difficulty in proving a mental state, the more likely legislators intended to create a strict liability offense to ensure more effective law enforcement. *Id.* A defendant's intentions or culpable mental state can

be inferred from [1 17] circumstantial evidence, such as his words, acts, and conduct. *See Walker*, 195 S.W.3d at 300 (citing *Smith v. State*, 965 S.W.2d 509, 518 (Tex. Crim. App. 1998); *Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004)). Because intent may be inferred from a defendant's words, actions, and conduct, proving a mental state in this statute is no more difficult than proving a mental state in another offense. *See Walker*, 195 S.W.3d at 300. This factor weighs in favor of requiring a culpable mental state.

Eighth, we examine the number of prosecutions expected. The fewer the expected prosecutions, the more likely the legislature meant to require the prosecutors to go into the issue of fault. *Aguirre*, 22 S.W.3d at 476. The greater the number of prosecutions, the more likely the legislature meant to impose liability without regard to fault. *Id.* Neither Florance nor the State attempted to argue the number of prosecutions for this offense. Based on the information and arguments before us, this factor is neutral.

Finally, we examine the severity of the punishment for an offense under section 106.04. The greater the punishment, the more likely some fault is required. *Id.* The presumption against strict liability becomes stronger for offenses punishable by confinement. *See Robledo*, 126 S.W.3d at 153. Conversely, the lighter the punishment, the more likely the legislature meant to impose liability without fault. *Id.* An offense under section 106.04 is a Class C misdemeanor. *See* TEX. ALCO. BEV. CODE ANN. § 106.04(c), 106.071(b). An individual adjudged guilty of a Class C misdemeanor shall be punished by

a fine not to exceed $500. TEX. PENAL CODE ANN. § 12.23. Conviction of a Class C misdemeanor does not impose any legal disability or disadvantage. *Id.* § 12.03(c). However, if it is shown the minor has previously been convicted at least twice of an offense, the offense is punishable by a fine of not less than $250 or more than $2,000, confinement in jail for a term not to exceed 180 days, or both. *Id.* § 106.071(c). In most cases, a violation of section 106.04 is punishable [1 18] by fine only. Punishment by confinement is a possibility only after two prior convictions for the offense. This factor weighs against requiring a culpable mental state.

A majority of the factors we have considered weigh against requiring a culpable mental state and demonstrate a violation of section 106.04 is a strict liability offense. Accordingly, we conclude the absence of a required culpable mental state does not render section 106.04 unconstitutional. We need not address Florance's other arguments in issue five that offer discussion regarding the "Law of the Sea," the failure of the United States Treasury Department to circulate gold and silver coins, the benefit of clergy, or *parens patria*. *See In re Purported Lien or Claim Against Taylor*, 219 S.W.3d at 623 (declined to address Richard Florance's irrelevant arguments regarding "maritime liens," "*in rem* matters," and perfection of liens).

IV. MODIFICATION OF JUDGMENT

Although neither Florance nor the State has raised the issue, we note the county court's judgment in trial court cause no. 003-81453-06 is styled "The State of Texas vs. Amanda Jean Florence." However,

Florance spells her last name with an "a," not an "e." The case in the county court was an appeal by trial de novo from the municipal court judgment. The municipal court judgment in trial court cause no. 2005007697 is styled "State v. Florance, Amanda Jean" and correctly spells her last name.

We have the power to modify an incorrect judgment to make the record speak the truth when we have the necessary information before us to do so. *See* TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529-30 (Tex. App.—Dallas 1991, pet. ref'd). Accordingly, we modify the style of the case of the county court's judgment in trial court cause no. 003-81453-06, which reads "'The State of Texas vs. Amanda Jean Florence," and replace it with "'The State of Texas vs. Amanda Jean Florance." [⊥ 19]

V. CONCLUSION

This appeal is reclassified as an appeal of a criminal conviction. We vacate the portion of this Court's July 25, 2008 order that directed the Clerk of the Court to change the style of the case to "*In the Matter of A.F., A Minor*," to identify the appeal as a civil appeal, rather than a criminal appeal, and to list Richard Florance as the contact person for the appeal. We direct the Clerk of the Court to change the style of the case to "*Amanda Jean Florance v. The State of Texas*," to identify the appeal as a criminal appeal, rather than a civil appeal of a juvenile proceeding, and to list Amanda Florance as the contact person for the appeal.

This Court does not have jurisdiction to review Florance's issue appealing the county court's judgment in trial court cause no. 003-81451-06, acquitting her in the failure to appear case. Florance's issue appealing the county court's judgment in trial court cause no. 003-81451-06 is dismissed.

Also, this Court does not have jurisdiction to review Florance's declaratory judgment claims, her challenges to the judgment of conviction against her in trial court cause no. 003-81453-06 because the county court assessed her punishment at a fine in the amount of $75, or her challenges to the constitutionality of various statutes and rules other than the statute on which her conviction was based.

Section 106.04 of the Texas Alcoholic Beverage Code is not unconstitutional. It is not void or over broad. It does not invade Florance's right to privacy. It is not unconstitutional because it is codified outside the Texas Penal Code or because it does not require a culpable mental state.

The county court's judgment in trial court cause no. 003-81453-06 is modified to correctly spell Florance's last name. [⊥ 20]

The county court's judgment in trial court cause no. 003-81453-06 is affirmed as modified.

/s/ Douglas S. Lang
DOUGLAS S. LANG
JUSTICE

Do Not Publish
TEX. R. APP. P. 47
080707F.U05

2009 May 8—Judgment

[Seal of THE STATE OF TEXAS]

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

AMANDA JEAN FLORANCE, Appellant	Appeal from the County Court at Law No. 3 of Collin County, Texas.
No. 05-08-00707-CR V.	(Tr.Ct.No. 003-81453-06).
THE STATE OF TEXAS, Appellee	Opinion delivered by Justice Lang, Justices FitzGerald and Lagarde participating.

Based on the Court's opinion of this date, this appeal is reclassified as an appeal of a criminal conviction. We **VACATE** the portion of this Court's July 25, 2008 order that directed the Clerk of the Court to change the style of the case to "*In the Matter of A.F.. A Minor*," to identify the appeal as a civil appeal, rather than a criminal appeal, and to list Richard Florance as the contact person for the appeal.

We **DIRECT** the Clerk of the Court to change the style of the case to "*Amanda Jean Florance v. The State of Texas*," to identify the appeal as a criminal appeal, rather than a civil appeal of a juvenile proceeding, and to list Amanda Florance as the contact person for the appeal.

Also, based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

The style of the case, which reads "The State of Texas vs. Amanda Jean Florence," is modified to correctly spell appellant Amanda Jean Florance's last name. The style of the case is replaced with the following style "The State of Texas vs. Amanda Jean Florance."

As modified, the judgment is **AFFIRMED**.

Judgment entered May 8, 2009.

/s/ Douglas S. Lang
DOUGLAS S. LANG
JUSTICE

County Court

2006 Jun 27—Underage Consumption – Guilty

Cause No. 003-81453-06

THE STATE OF TEXAS

VS.

AMANDA JEAN FLORENCE

IN THE COUNTY COURT

AT LAW NO. 3

COLLIN COUNTY, TEXAS

JUDGMENT - PLEA OF NOT GUILTY BEFORE JURY - FOUND GUILTY
FINAL CONVICTION - CLASS C

The defendant has been charged by complaint with the misdemeanor offense of **CONSUMPTION OF ALCOHOLIC BEVERAGE BY MINOR**. This case was called for trial; the State of Texas appeared; and the defendant appeared and either had counsel or waived counsel, any waiver having been voluntarily, knowingly, and intelligently made. Both parties announced ready for trial. The defendant was arraigned or waived arraignment and pleaded Not Guilty. A jury, to wit: and five others, was duly selected, impaneled and sworn.

And after hearing the Complaint read, the defendant's plea, and the evidence submitted, the jury was then duly charged according to the law to determine the guilt or innocence of the defendant. After hearing arguments of counsel, the jury retired in charge of the proper officer to consider its verdict, which was received and is now entered upon the minutes of the Court, to wit:

"We, the Jury, find the defendant guilty of **CONSUMPTION OF ALCOHOLIC BEVERAGE BY MINOR** as charged in the Complaint. We further assess a fine of $75.00. [sic] [1]

Presiding Juror

It is therefore ORDERED, ADJUDGED and DECREED that the defendant is guilty of the misdemeanor offense of **CONSUMPTION OF ALCOHOLIC BEVERAGE BY MINOR** committed on the **22ND** day of **JANUARY 2005**, as charged in the Complaint and punishment is assessed at a fine of **$75.00** and cost of Court.

It is further ORDERED, ADJUDGED, DECREED that all writs, processes, commitments, and capii my [sic] issue for enforcement of any fine, cost and sentence.

It is further ordered that the defendant pay the fine and costs of court on or before the **26TH** day of

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[1] [N.B. The problem goes beyond a missing end quote. Verdicts announced. 4 Tr. 80 (27 June 2006). "*(Jury exists the courtroom.) (Jury discharged.)*" *Id.* at 82 lines 5, 6. "THE COURT: All right. Now, a fine of $75 is assessed and imposed along with the court costs." *Id.* at 82 lines 23-24. *RJF*]

AUGUST, 2006.

SIGNED this the **27TH** day of **JUNE, 2006.**

/s/ John O. Barry
JOHN 0. BARRY
JUDGE PRESIDING

Court Cost **$208.00**

2006 Jun 27—Failure to Appear – Not Guilty

Cause No. 003-81451-06

THE STATE OF TEXAS

VS.

AMANDA JEAN FLORENCE

IN THE COUNTY COURT
AT LAW NO. 3
COLLIN COUNTY, TEXAS

JUDGMENT - PLEA OF NOT GUILTY BEFORE JURY - FOUND NOT GUILTY - CLASS C

The defendant has been charged by complaint with the misdemeanor offense of **FAILURE TO APPEAR**. This case was called for trial; the State of Texas appeared; and the defendant appeared and

either had counsel or waived counsel, any waiver having been voluntarily, knowingly, and intelligently made. Both parties announced ready for trial. The defendant was arraigned or waived arraignment and pleaded Not Guilty. A jury, to wit: and five others, was duly selected, impaneled and sworn.

After hearing the Information read, the defendant's plea, and the evidence submitted, the jury was then duly charged according to the law to determine the guilt or innocence of the defendant. After hearing arguments of counsel, the jury retired in charge of the proper officer to consider its verdict, which was received and is now entered upon the minutes of the Court, to wit:

"We, the Jury, find the defendant Not Guilty. [sic]

Presiding Juror

It is therefore ORDERED, ADJUDGED and DECREED, that the defendant is acquitted of the offense of **FAILURE TO APPEAR**, and is immediately discharged from all further liability in this case.

SIGNED this the **27TH** day of **JUNE, 2006**.

/s/ John O. Barry
JUDGE PRESIDING

Federal Court

2007 Feb 20—Dismissal *and* Remand

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

STATE OF TEXAS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	4:06CV178
	§	
AMANDA JEAN FLORANCE,	§	
	§	
Defendant.	§	

ORDER DISMISSING CASE FOR LACK OF SUBJECT MATTER JURISDICTION AND REMANDING CASE TO COUNTY COURT AT LAW NO. 3 OF COLLIN COUNTY TEXAS

On February 16, 2007, the court conducted a hearing on the record in this case in accordance with the court's "Amended Notice of Hearing for the Court to Admonish Defendant Regarding Defamatory Pleadings." The Amended Notice of Hearing referred to the cause number in this case as well as Cause No. 4:06cv459, a case which has already been remanded. Defendant Amanda Jean Florance and her father, Richard John Florance, Jr., attended the hearing. At the hearing, the court instructed Ms. Florance that while judges are not immune from fair criticism and

she is not required to agree with the court's rulings, the allegations she made in her pleadings in Cause No. 4:06cv459, which accuse United States Magistrate Judge Don Bush of criminal conduct and of abusing his office, cross the line from civil discourse in pleadings to contemptuous statements. The court further warned Defendant Amanda Jean Florance and her father, who has assisted her in preparing her pleadings, that in the future if either of them sign or file pleadings in this or any other case before the undersigned judge containing such language, they could be cited for contempt. [⊥ 2]

Still pending before the court is Cause No. 4:06cv178. Like Cause No. 4:06cv459, which was remanded to the Plano Municipal Court on January 16, 2007, the underlying action in this case is criminal. On November 9, 2006, Defendant Florance improperly removed a case pending in County Court at Law No. 3 of Collin County, Texas arising from a citation issued to her for "Minor Consumption of Alcohol" on January 22, 2005. This citation is purely criminal in nature. Sections 106.04 and 106.071 of the Texas Alcoholic Beverages Code make clear that a citation for consumption of alcohol by a minor is a Class C misdemeanor.

Sections 1442, 1442a and 1443 of Title 28 of the United States Code specifically identify the only criminal matters in which removal to federal court is appropriate. Defendant Florance's citation for consumption of alcohol by a minor is not a criminal violation removable under the United States Code, and the court does not have subject matter jurisdiction in this case. Section 1447 of the Title 28 of United States Code provides that "[i]f at any time

before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." Accordingly, this case is dismissed and is hereby remanded to County Court at Law No. 3 of Collin County, Texas.

It is so ORDERED.

SIGNED this the 20th day of February, 2007.

/s/ Richard A. Schell
RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE

Rule 14.1(i)(iii)—Rehearing, or other extension

Activation of the state appellate process

Rule 14.1(i)(iv)—Judgment of different date

None

Rule 14.1(i)(v)—Statutes and Rules

Texas Alcoholic Beverage Code

Sec. 106.04. CONSUMPTION OF ALCOHOL BY A MINOR.

(a) A minor commits an offense if he consumes an alcoholic beverage.

(b) It is an affirmative defense to prosecution under this section that the alcoholic beverage was consumed in the visible presence of the minor's adult parent, guardian, or spouse.

(c) An offense under this section is punishable as provided by Section 106.071.

(d) A minor who commits an offense under this section and who has been previously convicted twice or more of offenses under this section is not eligible for deferred disposition. For the purposes of this subsection:

(1) an adjudication under Title 3, Family Code, [footnote omitted] that the minor engaged in

conduct described by this section is considered a conviction of an offense under this section; and

(2) an order of deferred disposition for an offense alleged under this section is considered a conviction of an offense under this section.

ALCO. BEV. CODE § 106.04 (West Supp. 2003).

Acts 1977, 65th Leg., p. 514, ch. 194, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 163, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 934, Sec. 77, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1013, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1207, Sec. 1, eff. Sept. 1, 1999.

Texas Criminal Procedure Code

Art. 4.03. Courts of Appeals.

The Courts of Appeals shall have appellate jurisdiction coextensive with the limits of their respective districts in all criminal cases except those in which the death penalty has been assessed. This Article shall not be so construed as to embrace any case which has been appealed from any inferior court to the county court, the county criminal court, or county court at law, ***in which the fine imposed by the*** county court, the county criminal court or ***county court at law does not exceed one hundred dollars***, unless the sole issue is the constitutionality of the statute or ordinance on which the conviction is based.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 4.03 (emphasis added) (the "tyranny allowed zone").

Art. 4.08. Appellate Jurisdiction of County Courts.

The county courts shall have appellate jurisdiction in criminal cases of which justice courts and other inferior courts have original jurisdiction.

Art. 4.08.

Art. 44.17. Appeal to County Court, How Conducted.

In all appeals to a county court from justice courts and municipal courts other than municipal courts of record, the trial shall be de novo in the trial in the county court, **the same as if the prosecution had been originally commenced in that court**. ...

Art. 44.17 (emphasis added). (regarding the Summons "TO THE PARENTS OF:")

Art. 44.181. Defects in Complaint.

(a) A court conducting a trial de novo based on an appeal from a justice or municipal court may dismiss the case because of a defect in the complaint only if

the defendant objected to the defect before the trial began in the justice or municipal court.

(b) The attorney representing the state may move to amend a defective complaint before the trial de novo begins.

Art. 44.181. *But see Bird v. State*, 927 S.W.2d 136 (Tex. App.—Houston [1st Dist.] 1996, no pet.)

Art. 45.018. Complaint [Municipal Court]

(a) For purposes of this chapter, a complaint is a sworn allegation charging the accused with the commission of an offense.

(b) A defendant is entitled to notice of a complaint against the defendant ***not later than the day before*** the date of any proceeding in the prosecution of the defendant under the complaint. The defendant may waive the right to notice granted by this subsection.

Art. 45.018 (emphasis added).

Art. 45.0215. Plea by Minor and Appearance of Parent

(a) If a defendant is younger than 17 years of age and has not had the disabilities of minority removed, the judge or justice:

(1) must take the defendant's plea in open court; and

(2) shall issue a summons to compel the defendant's parent, guardian, or managing conservator to be present during:

(A) the taking of the defendant's plea; ***and***

(B) ***all <u>other</u> proceedings*** relating to the case.

Art. 45.0215 (emphasis added).

Art. 45.042. Appeal.

(a) Appeals from a justice or municipal court, including appeals from final judgments in bond forfeiture proceedings, shall be heard by the county court except in cases where the county court has no jurisdiction, in which counties such appeals shall be heard by the proper court.

(b) Unless the appeal is taken from a municipal court of record and the appeal is based on error reflected in the record, the trial shall be de novo. Art. 45.042.

Texas Government Code

Appellate courts

Sec. 22.220. Civil Jurisdiction.

(a) Each court of appeals has appellate jurisdiction of all civil cases within its district of which the district courts or county courts have jurisdiction

when the amount in controversy or the judgment rendered exceeds $100, exclusive of interest and costs.

(b) If a court of appeals having jurisdiction in a case, matter, or controversy that requires immediate action is unable to take immediate action because the illness, absence, or unavailability of the justices causes fewer than three members of the court to be present, the nearest available court of appeals, under rules prescribed by the supreme court, may take the action required in the case, matter, or controversy.

(c) Each court of appeals may, on affidavit or otherwise, as the court may determine, ascertain the matters of fact that are necessary to the proper exercise of its jurisdiction.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.
Amended by: Acts 2009, 81st Leg., R.S., Ch. 1351, Sec. 3, [1] eff. September 1, 2009.

GOV'T CODE § 22.220 (West 2007).

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[1] SECTION 3. Subsection (a), Section 22.220, Government Code, is amended to read as follows:

(a) Each court of appeals has appellate jurisdiction of all civil cases within its district of which the district courts or county courts have jurisdiction when the amount in controversy or the judgment rendered exceeds $250 [~~$100~~], exclusive of interest and costs.

Municipal court

Sec. 29.002. Creation.

A municipal court is created in each municipality. A reference in state law to a "corporation court" means a "municipal court."

§ 29.002 (West 2004).

Sec. 29.003. Jurisdiction.

(a) A municipal court, including a municipal court of record, shall have exclusive original jurisdiction within the municipality's territorial limits and property owned by the municipality located in the municipality's extraterritorial jurisdiction in all ***criminal*** cases that:

(1) arise under:

(A) the ordinances of the municipality; or

(B) a resolution, rule, or order of a joint board operating an airport under Section 22.074, Transportation Code; and

(2) are punishable by a fine not to exceed:

(A) $2,000 in all cases arising under municipal ordinances or resolutions, rules, or orders of a joint board that govern fire safety, zoning, or public health and sanitation, including dumping of refuse; or

(B) $500 in all other cases arising under a municipal ordinance or a resolution, rule, or order of a joint board.

(b) The municipal court has concurrent jurisdiction with the justice court of a precinct in which the

municipality is located in all ***criminal*** cases arising under state law that arise within the municipality's territorial limits or property owned by the municipality located in the municipality's extraterritorial jurisdiction and that:

(1) are punishable only by a fine, as defined in Subsection (c); or

(2) arise under Chapter 106, Alcoholic Beverage Code, and do not include confinement as an authorized sanction.

(c) In this section, an offense which is punishable by "fine only" is defined as an offense that is punishable by fine and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment.

(d) The fact that a conviction in a municipal court has as a consequence the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the municipal court.

(e) The municipal court has jurisdiction in the forfeiture and final judgment of all bail bonds and personal bonds taken in criminal cases of which the court has jurisdiction.

(f) This section does not affect the powers given exclusively to a joint board operating an airport under Section 22.074(d), Transportation Code.

§ 29.003 (West 2004) (emphasis added).

Texas Rules of Appellate Procedure

Tex. R. App. P. 25.2

(d) *Certification of Defendant's right of appeal.*

If the defendant is the appellant, the record must include the trial court's certification of the defendant's right to appeal under Rule 25.2(a)(2). The certification should be part of the record when notice is filed, but may be added by timely amendment or supplementation under this rule or Rule 34.5(c)(1) or Rule 37.1 or by order of the appellate court under Rule 34.5(c)(2). **The appeal must be dismissed if a certification that shows the defendant has the right of appeal has not been made part of the record under these rules.**

TEX. R. APP. P. 25.2(d) (**emphasis added**) (***emphasis in original***).

Rule 14.1(i)(vi)—Additional Materials

Summons "TO THE PARENTS OF:"—2005 Jan 31

CITY OF PLANO MUNICIPAL COURT
900 EAST 15TH STREET, P.O. BOX 860828
PLANO, TEXAS 75086-0828

January 31, 2005

TO THE PARENTS OF:
AMANDA JEAN FLORANCE
1908 VASSAR DR
RICHARDSON, TX 75081

SUMMONS TO APPEAR

RE: STATE OF TEXAS V. AMANDA JEAN FLORANCE

CAUSE NO: 2005007697 /35528

The records of the Municipal Court reflect that your son or daughter has been charged with a violation of the State of Texas Traffic and/or Criminal Laws. Offenses of this type brought against a juvenile require the juvenile's appearance in Court before the Municipal Judge with one or both parents, or legal guardian, regardless of the plea.

IN REFERENCE TO THIS CASE, YOU ARE HEREBY SUMMONED TO PERSONALLY APPEAR BEFORE THE PLANO MUNICIPAL COURT WITH THE ABOVE-NAMED JUVENILE ON THE 1ST

DAY OF MARCH,2005, AT 02.30P.M.

THE FAILURE OF A PARENT, MANAGING CONSERVATOR, OR GUARDIAN TO APPEAR IN COURT AS SUMMONED HEREIN MAY BE PUNISHABLE AS A CLASS C MISDEMEANOR.

You are given NOTICE that Art. 45.057, Texas Code of Criminal Procedure, establishes an obligation to notify the court as follows:

(h) A child and parent required to appear before the court have an obligation to provide the court in writing with the current address and residence of the child. The obligation does not end when the child reaches age 17. On or before the seventh day after the date the child or parent changes residence, the child or parent shall notify the court of the current address in the manner directed by the court. A violation of this subsection may result in arrest and is a Class C misdemeanor. The obligation to provide notice terminates on discharge and satisfaction of the judgment or final disposition not requiring a finding of guilt.

(i) If an appellate court accepts an appeal for a trial de novo, the child and parent shall provide the notice under Subsection (h) to the appellate court.

If your son or daughter wishes to plead not guilty to the above charge, you may request a Trial by Judge or Trial by Jury to be scheduled when you appear on the above date. If a Driving Safety Course is requested in Court, your minor MUST have a valid TEXAS Drivers License and the proof of Financial

Responsibility with **HER**.

Should you decide to retain an attorney to represent your child, the attorney WILL BE required to appear with both you and your child on the above-stated court date and time. **If you do not speak English and you will need an interpreter, please notify the Court prior to the above referenced Court date.**

A copy of the citation your son/daughter received is enclosed for your review. If you would like additional information or have any questions, please call our office at (972) 941-2199.

PLEASE NOTE THAT APPROPRIATE ATTIRE IS REQUIRED IN THE COURTROOM. NO SHORTS WILL BE PERMITTED. NO GUM CHEWING.

IF YOU FAIL TO APPEAR ON THE ABOVE-REFERENCED DATE AND TIME, THE FINE/ BOND AMOUNT WILL INCREASE UP TO AN ADDITIONAL $50.00, NOT TO EXCEED THE MAXIMUM AMOUNT ALLOWED BY STATE LAW.

IF GRANTED ONE OF THE OPTIONS AT PRETRIAL, THE COST OF THE OPTION MUST BE PAID IN FULL AND APPROPRIATE DOCUMENTATION PROVIDED.

Fine Amount: $252.00
Maximum Fine Amount: $552.00

Plano Municipal Court

[SEAL of the CORPORATION COURT IN PLANO TEXAS]

ENCLOSURE: Copy of Citation

A.F.'s Agreement to Appear—2005 Mar 1

FILED
Municipal Court
City of Plano, Texas

MAR 0 1 2005

Clerk of the Court #20

CITY OF PLANO MUNICIPAL COURT
900 EAST 15TH STREET, P.O. BOX 860828
PLANO, TEXAS 75086-0828

NOTICE OF REARING – JURY TRIAL

CAUSE/TICKET NO: **2005007697 / 35528**
VIOLATION: **ALCOHOL/CONSUMPTION OF ALCOHOLIC BEVERAGE BY MINOR**
DATE OF OFFENSE: **01/22/2005**
TODAY'S DATE: **March 1, 2005**

STATE OF TEXAS

vs.

Amanda Jean Florance
~~AMANDA JEAN FLORANCE~~

NOTICE IS HEREBY GIVEN THAT A HEARING ON THE ABOVE STYLED AND NUMBERED CAUSE WILL BE HELD ON **WEDNESDAY, APRIL 6TH, 2005 at 8:00 A.M.** IN THE RAYMOND ROBINSON JUSTICE CENTER, **900 EAST 15TH STREET, PLANO, TEXAS**

CLERK:jrh
ATTORNEY:

Amanda Jean Florance
I ~~AMANDA JEAN FLORANCE~~, PROMISE TO APPEAR AT THE DATE AND TIME STATED ABOVE.

/s/ Amanda Jean Florance *March 1, 2005*
Signature of Defendant Date
Without prejudice

1908 Vassar Drive *(972) 644-7401*
Address Phone Number

Richardson, Texas 75081
City, State, Zip

[SEAL of the CORPORATION COURT IN PLANO TEXAS]

NOTICE: APPROPRIATE ATTIRE REQUIRED IN COURTROOM; NO SHORTS, TANK TOPS OR HALTER TOPS. NO FOOD, DRINKS OR GUM CHEWING.

IF YOU FAIL TO APPEAR ON THE ABOVE-STATED DATE AND TIME, THE FINE/BOND

AMOUNT WILL INCREASE UP TO AN ADDITIONAL $50.00, NOT TO EXCEED THE MAXIMUM AMOUNT ALLOWED BY STATE LAW.

The ex parte motion and ruling in municipal court—2005 Jul 22

Note: *See* 4 Tr. 23-26 (27 Jun 2006), regarding Def. Ex. 14. "Exhibit D" is one of five attachments to the document admitted as Def. Ex. 14.

Rodney Patten

From: Don Stevenson

Sent: Friday, July 22, 2005 4:26 PM

To: Rodney Patten

Subject: RE: Amanda Florance Cause # 2005007697

The cause in question is 2005056271 - Violation of Continuing Obligation to Appear.

I will direct that no further action be taken on this case. As to the original case, it is set for an August 9th pre-trial hearing. If the Removal issue is not resolved by then, I will reset that case.

I fail to see how a defendant can remove a state criminal proceeding to a federal court by calling it a civil action. You can call a pig a bird, but it still can't fly.

Please let me know what the results of the motions are so that, hopefully, I can reschedule this case for immediate action.

Don

-----Original Message -----
From: Rodney Patten
Sent: Friday, July 22, 2005 4:03 PM
To: Don Stevenson
Subject: Amanda Florance Cause # 2005007697

Judge Stevenson, it appears that on July 19, 2005, Amanda Florance was sent a letter from the court with a compliant informing her that a citation had been filed against her for the violation of failing to appear for her July 6, 2005, trial. However, this case was removed to the federal district court located in Sherman on July 5, 2005, which we have since responded to by filing a Motion to Remand. However, until the federal court rules on the Florance's Notice of Removal, all activity on this matter needs to be stayed in this court until the federal court directs otherwise. Therefore, please instruct the clerks office not to issue any further notices, letters or warrants until we have received the ruling from the federal court.

Thank you,

Rodney D. Patten
Assistant City Attorney I
City of Piano
P. O. Box 860358
Tel. 972-941-2056
Fax 972-941-2059

This transmittal may be a confidential attorney-client communication or may otherwise be privileged. If you are not the intended recipient, you have received this transmittal in error. Any review, dissemination, distribution or copying of this transmittal is strictly prohibited. If you have received this transmittal in error, please contact the Piano Prosecution Office at 972.941.2056 and delete this message and any attachments.

7/22/2005

The "Complaint"—2005 Mar 31

FILED
Municipal Court
City of Plano, Texas

MAR 3 1 2005

Clerk of the Court #20

2510, ALCOHOL/CONSUMPTION OF ALCOHOLIC BEVERAGE BY MINOR

THE STATE OF TEXAS
COUNTY OF COLLIN
CITY OF PLANO

CAUSE NUMBER 2005007697

IN THE MUNICIPAL COURT

CITY OF PLANO, TEXAS

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS

BEFORE me, the undersigned authority, on this day personally appeared the undersigned affiant who, after being duly sworn by me, deposes and says:

I, **ALICIA NORS**, do solemnly swear that I have good reason to believe and do believe, my belief being based upon my personal investigation of the hereinafter described offense, that **AMANDA JEAN FLORANCE** ("Defendant"), on or about the **22ND**

day of **JANUARY, 2005**, and before the making and filing of this complaint, did then and there consume an alcoholic beverage at a location within the incorporated limits of the City of Plano, Collin County, Texas, to-wit: **6511 GOLD LANE**, and defendant was then and there under the age of twenty one (21) years and said defendant was not then and there in the presence of an adult parent, guardian or spouse, or other adult to whom defendant had been committed by a court,

AGAINST THE PEACE AND DIGNITY OF THE STATE

[SEAL of the CORPORATION COURT IN PLANO TEXAS]

/s/ AS Nors
AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME BY AFFIANT ON THIS THE

31 DAY OF *March* A.D. *2005*

/s/ B???? S????? [illegible]
CLERK OF THE MUNICIPAL COURT
CITY OF PLANO
STATE OF TEXAS